

## Accounting signifiers, political discourse, popular resistance and legal identity during Pakistan Steel Mills attempted privatization

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# Accounting signifiers, political discourse, popular resistance and legal identity during Pakistan Steel Mills attempted privatization

## Abstract

Using the privatization of Pakistan Steel Mills (PSM) as an empirical site and drawing on Laclau and Mouffe's (1985) discourse theory, this paper traces the discursive struggle between two discourses on the valuation and privatization of PSM. Specific signifiers were articulated and re-articulated into different chains of equivalence to create an appeal for each discourse surrounding the steel mill's valuation. The anti-privatization discourse's 'success' derived from its 'interdiscursivity' i.e. drawing on disparate signifiers from different meta-discourses; accounting, nationalism, state corruption and 'informal' signifiers such as 'family silver', 'market value' and 'throw away price'. In contrast, the pro-privatization discourse drew on a homogenous (financial) economics discourse using more formal and technical signifiers such as 'going concern' and 'sensitivity adjusted discounted cash flow value'. The anti-privatization discourse, with its diverse and informal (accounting) signifiers gained 'empirical validity', 'narrative fidelity', 'and experiential commensurability', appealed more to the masses, the media, and the judiciary. It convinced them selling PSM was a grave injustice, which must be prevented. Hence the Supreme Court reversed the privatization decision, which soured executive-judiciary relations, and led the military government to suspend the Chief Justice of Pakistan, and later the judiciary, media outlets, and the Constitution, which precipitated a successful social movement for an independent judiciary and the restoration of democracy. Events were shaped by the various interests of parties concerned and created new identities for them. The paper concludes by reflecting on how the findings contribute to, and add new issues for accounting research using discourse analysis.

**Keywords:** Public Sector, valuation, privatization, Pakistan, discourse theory, Critical accounting and law

## 1. Introduction

*The differences between General Pervez Musharraf and deposed Chief Justice Iftikhar Muhammad Chaudhry cropped up over the privatization of the Steel Mills. When the case was being heard by a full court of the Supreme Court, President Musharraf called him (Justice Iftikhar Chaudhry) and asked as to what kind of remarks he (Musharraf) was hearing from him, adding the case should be decided in a manner that it does not cause any loss to the country. To this, Justice Iftikhar said, "You shouldn't worry. I will decide the case in the best interest of the country." The next day when the Supreme Court judgment in the case came, it was totally against the expectations of the president. It was then that a row between the president and the then chief justice ensued.*

*Former Chairman of Pakistan Steel Mills (The News, May 25, 2008)*

Two major institutions that constantly deal with valuation issues are accounting and law. Accounting values objects based on its own 'rules' whereas courts decide on contested value of objects<sup>i</sup> based on legal principles. But how do accounting and the law interact under such circumstances? From a sociological perspective, key questions become why and how certain monetary values are assigned to an object by a court of law; and their impact upon social practices and institutions (Fourcade, 2011). The "plasticity" of accounting values (Mennicken and Sjögren, 2015) and how powerful groups use accounting to construct values promoting their interests is long established (Burchell et al, 1980; Briers and Chua, 2001). However, less is known on the politics of public, i.e. popular valuation disputes, their resolution in courtrooms, and their implications for socio-political change<sup>ii</sup>. Hence this paper seeks to understand why and how one valuation gained greater credibility within wider society and the superior courts; the role of media discourses in this; and their links to social movements challenging dominant groups and seeking socio-political change (Fourcade, 2011).

The paper contributes to post-structural accounting research, which sees accounting as a social construction (Hines, 1988, 1991; Mouck, 2004; Macintosh et al, 2000; Graham, 2008). It uses Laclau and Mouffe's (1985) discourse theory and Laclau's (2005) work on populism to explain how and why discursive activity around the Pakistan Steel Mill's (PSM) privatization became a political endeavor, and how accounting can change discourses that hegemonize the social landscape (Cooper et al., 2005). The main institutions involved were the military-backed government, the military, the media, civil society and a social movement, and the judiciary. The valuation of PSM and the struggle between proponents of pro- and anti-privatization discourses lay at the heart of this. The paper traces the social construction of competing accounting valuations (Hacking, 1999), and how media outlets reflected and reinforced each accounting discourse before and after the Supreme Court of Pakistan (SCP) reversed the privatization. Successive suspensions of the Chief Justice of Pakistan (CJP), senior judges, and eventually the Constitution, precipitated a social movement resulting in major political upheaval and change leading to the military regime's downfall less than 2 years later.<sup>iii</sup>

Despite calls for more research on accounting and law (Bromwich and Hopwood, 1992), and their growing interconnection (Napier and Noke, 1992) research on accounting in courtrooms remains scant (Beattie et al, 1999). Law creates a framework for accounting; accounting produces information for the legal process; and occasionally law passes judgment on accounting. Like accounting, the dominant legal research paradigm has been positivism (Davies, 2002). Both assume that objects are separate from subjects<sup>iv</sup>, and research can be value-free. This is disputed within critical studies of law (Cotterrell, 1992) and accounting (Hopper and Powell, 1986) that claim that the acts of each can be political; are enacted by human agents with personal interests,

cultural biases; and are influenced by external pressures (Moore, 1991). In the PSM judgement, judges drew attention to alleged procedural irregularities, but as their comments during the trial and interviews suggest, they were equally, if not more concerned with the valuations. Our research suggests that judges were more persuaded by an inter-discursive narrative (Fairclough, 1992) combining elements drawn from nationalist, accounting and humanitarian discourses with informal, more tangible accounting valuations than a homogenous (financial) economic discourse represented by ‘sophisticated’, abstract, futuristic accounting calculations from leading accounting firms and the state. Different ‘constructions’ of value helped create or reinforce new identities and relations between positions and institutions, especially the judiciaries’ role as protector of the Constitution, a check on executive powers, and in pricing decisions.

The paper is organized thus. It commences with a literature review of accounting valuation and associated discourses in courtrooms, the media and social movements, followed by an exposition of Laclau and Mouffe’s theoretical framework and its relevance to these issues. The next sections describe the research methods and the political and judicial context of the privatization. Then the privatization case analysis is iterated with the theoretical framework and is followed by a postscript. The last section discusses the theoretical and empirical contributions.

## **2. Accounting, Valuation, Judiciary, Media and Discourse Analysis**

The sociology of valuation establishes that valuation is a complex process involving technologies such as accounting; social processes; agents with interests, powers and emotions; discourses, the media and their audience (Muniesa, 2011). In this complex milieu, an important question is the role accounting plays in creating value of objects, which is accentuated when valuations are disputed (Christener, 2015; Mennicken and Sjögren, 2015). How does the genre and style of accounting discourse and its interweaving with other discourses render one construction of valuation more ‘credible’ in the eyes of public and judges than another (Fairclough, 1992)?

Valuation disputes generally arise in intra-organizational settings, where *a priori* interests and beliefs of organizational actors draw the battle lines (Mouck, 2004). These are often influenced by broader discourses, which help create a temporary coalition of organizational actors around a ‘right’ valuation methodology (Briers and Chua, 2001). However, valuation disputes also arise in extra-organizational settings; for example, valuations by the state and supported by large accounting firms are often criticized by those directly affected, opposition political parties and academia (Cooper and Hopper, 1988). Extra-organizational valuation disputes face different issues than intra-organizational ones, especially regarding the creation of a temporary coalition supporting the alternative valuation and establishing its importance. Establishing contrary constructions of value against a formidable opposition, such as the accounting profession and the state, requires creating a public discourse that enters the interpretive frames of the larger, often disinterested public (Briers and Chua, 2001; Cooper and Taylor, 2005). Extra-organizational valuations like the cost of running a prison or a coal mine affect thousands of people, and popular perceptions of (un)fair valuation can have major political and social implications (Cooper and Hopper, 1988).

Catchpole and Smythe (2016) argue that conventional accounting is class based, frustrates ‘emancipatory’ projects, and garnering support for alternative valuations is difficult in a political and legal environment supportive of the *status quo* (Arnold and Cooper, 1999). However, Gallhofer and Haslam (2003) dispute whether accounting has an inherent class bias for social movements and the media may interpret accounting ‘facts’ differently. Thus, they argue,

accounting can assume different meanings and significance within competing discourses, and support different hegemonies. Any bias depends on how it is signified. But to be effective the crowd must cohere into a social movement (Laclau, 2005). This requires enrolling intellectuals and experts to give shape and credence to its counter calculations and alternative discourse; and extensive, sympathetic and repeated media coverage (Pan and Kosicki, 2001; Neu et al., 2001). The role of media organizations is extremely important. Media organizations and journalists want news items that increase their audience within their time and space constraints, and they tend to cover stories that resonate with issues that they ‘care about’ (Marchi 2005; Andrews and Karen, 2010). They prefer calculations using simple numbers and stories that appeal to ‘common-sense’, invoke scandals, and are repetitive - in the face of this repeated appeals by governments to findings of experts may prove ineffective (Neu et al., 2001). Nevertheless, we know little about how accounting can grant a discourse media attraction and thence become more salient for the public, especially in those rare situations when the state, the accounting profession and private business interests converge, yet their valuation is successfully contested by a powerful social movement (Cooper and Taylor, 2005). Similarly, we know little on how the media may influence valuation disputes in courts (Muniesa, 2011).

Despite much sociological and legal research on decision-making by jurors, there is surprisingly little on judicial decision-making which, arguably, is more important than the former (Dworkin, 1986). More specifically, like sociology, law and economics, there is little accounting research on how judges determine a ‘correct’ valuation. Legal and political research shows that contrary to common perception, judges are not invariably rational experts (Guthrie et al, 2001). Their decisions are influenced by their experiences, e.g. of gender or race, and discursive ploys used by court actors presenting the ‘facts’ of a case (Mcpherson and Sauder, 2013). Nevertheless, judges increasingly and uncritically favour ‘sophisticated’, abstract economic valuation models despite their subjectivity, which reflects the credibility modern society accords to quantification (Beattie et al., 1999; Cummings and Harrison, 1994; Porter, 1995). After reviewing decisions in the USA, UK, Australia and Canada, Yee (2002) observed a growing trend, especially after 1982, for courts to favour DCF and similar futuristic valuation methods over simpler ‘market value’, ‘net book value’ and ‘income’ approaches due to the formers’ greater acceptability in financial markets. Valuation trials are often expensive and involve high stakes. Because courts allegedly give considerable credibility to ‘expert’ opinions (Brint, 1998; Nesler et al., 1993) both parties often employ highly esteemed economic experts (Duffield, 1997). However, judges have not consistently accepted sophisticated valuation methods, even within the same case (Fourcade, 2011). For example, in the famous Exxon Mobil case, judges accepted one valuation principle for one class of litigant but not the other (Duffield, 1997). Inconsistencies in judicial valuation decisions warrant more scrutiny of ‘what goes inside the judicial mind’ when ruling on valuation disputes (Guthrie et al, 2001). We know agents infuse accounting numbers with fears, fantasies and aspirations during valuation disputes but how do these bear on legal valuation cases (Henri Guénin-Paracini et al., 2014; Mennicken and Sjögren, 2015)? New and differing accounting valuations within competing discourses can wreak crises and change precarious and contingent identities and interests, including those of judges, and mark political transformations (Beattie et al., 2004; Freedman and Stagliano, 2002; Livesey and Kearins, 2002; Tredigda and Milne, 2006). However, there is little on this in the accounting literature.

In summary, this paper analyses a discursive and political struggle between the state and the media, the court, and civil society emanating from the valuation of a public enterprise marked for privatization. In so doing, it reveals the constitutive role of accounting in valuation and its links to

emotions, power and interests, judicial decision-making, government reactions, and eventually to a political struggle bringing political and judicial change (Mennicken and Sjögren, 2015; Fourcade 2011). It traces how accounting ‘facts’ gain different meanings and significance within competing discourses (Arnold and Cooper, 1999; Gallhofer and Haslam (2003); and how, to bring socio-political change, intellectuals and experts helped formulate and legitimate an alternative discourse with popular resonance (Pan and Kosicki, 2001; Neu et al., 2001); and helped cohere crowds into an effective mass social movement (Laclau, 2005). Laclau and Mouffe’s (1985) theory and refinements to it by Essex School of discourse theory members (Stavrakakis, 1999; Howarth and Stavrakakis, 2000; Glynos and Howarth, 2007) were deemed apt for this task, as they focus on discourses, their articulation, and processes whereby one discourse dominates another within the politics of change.

### 3. Laclau and Mouffe on Discourse Theory

Laclau and Mouffe (1985) build on Gramsci’s notion of hegemony (1971). Gramsci rejected the classical Marxist belief that institutions such as the state, media, religion, and education hide the ‘true’ nature of exploitative economic relations. Instead he argued that politics had a degree of independence from economic relations and dominant groups must gain the consent of the dominated through material concessions but also, more importantly, creating an ideology that renders the domination acceptable. Thus, all actions (including coercive punishments) by those in power must tally with accepted ideological principles: domination without supportive hegemonic ideological arrangements is weak and vulnerable (Gramsci, 1971). To change a hegemony (such as Western capitalism), an ideological ‘war of positions’ must weaken the existing hegemony in preparation for implementing a new hegemony.

Laclau and Mouffe (1985) concur that ‘politics’ is vital for creating (and breaking) hegemony but see language as critical. They reject class identity being related to the ownership of the means of production and ‘false consciousness’ being shaped by a superstructure formed by its base - rather groups in society are the result of political, discursive processes. A reality independent of language exists but cannot be unequivocally reached. For Laclau and Mouffe, language and discourse constitute social reality (Spence, 2007).

*That every object is constituted as an object of discourse has nothing to do with whether there is a world external to thought ... An earthquake or the falling of a brick is an event that certainly exists ... but whether their specificity as objects is constructed in terms of 'natural phenomena' or 'expressions of the wrath of God', depends upon the structuring of a discursive field. What is denied is not that such objects exist externally to thought, but the rather different assertion that they could constitute themselves as objects outside any discursive conditions of emergence (Laclau and Mouffe. 1985:108).*

Discursive and non-discursive material elements are inseparable because the latter gain meaning and existence not from any objective reality but through discourses. Hence social actions, policies, and institutions must be studied according to the discursive framing they are couched within. Mouck (1995), for example, argues that financial accounting discourse is so dominant because its implicit assumptions about property rights, market exchange and the corporation as a legal entity are talked into reality.

For Laclau and Mouffe, forming a discourse is a political process drawing together different signifiers from diverse meta-discourses to form an ordered discursive space within which objects and ‘subject positions’ are created. For instance, the signifier ‘West’ can gain a specific

meaning by linking it to signifiers such as ‘civilized’, ‘white people’, ‘Christianity’, and ‘democracy’. This discursive process establishes ‘chains of equivalence’ among different signifiers that endows the central signifier (the West) with certain meanings (Jorgensen and Philips, 2002). Creating chains of equivalence is political because it defines in relational terms what the central signifier represents and, more importantly, what it does not. For example, financial accounting reduces organizational problems to economic problems, thereby excluding consideration of social and environmental issues (Spence, 2007). Thus, discursive constructions involve a process of ‘inclusions’ and ‘exclusions’ to create a central meaning. Laclau and Mouffe (1985) label the central signifier and meaning of a discursive formation a ‘nodal point’ which, like any other sign, is an ‘empty sign’, *i.e.* it can potentially mean anything depending upon the discursive constructions of signifiers around it. A nodal point may give new meanings to existing signifiers, thereby changing the discourse. The nodal point ‘communism’, for example, rearticulated signifiers from a ‘capitalist’ discourse, *e.g.* state, democracy, freedom, and gave them new meanings: ‘democracy’ became ‘true democracy’ not bourgeois democracy, and ‘freedom’ meant economic freedom (Howarth and Starvakakis, 2000). An important quality of signifiers (including nodal points) in discursive struggles is their ability to get attached to different discourses. These are termed ‘floating signifiers’, *e.g.*, the signs ‘imperialism’, ‘exploitation’ and ‘racism’ can be constructed around the same nodal point, *i.e.* ‘the West’, to create another discourse. ‘The West’ here is a floating signifier.

Proponents of a discourse strive to exclude other interpretations of the world and devise strategies to expand its reach and domination: differences often create an ‘us’ vs. ‘them’ divide (Spence, 2007). Laclau and Mouffe (1985) label this ‘the logic of equivalence’. Analysis of rhetorical strategies by proponents of respective discourses to achieve discursive domination lie at the heart of understanding discursive struggles. Every signifier has its own ‘history’ of how it helped communicate certain meanings (Kristiva, 1986). The articulation process can give ‘new’ meanings to existing signifiers by changing how they are used and/or creating new constellations of different signifiers from diverse meta-discourses (Fairclough, 1992; Kenny and Scriver, 2012; Bommel and Spicer, 2011). This ‘newness’ or inter-discursivity must resonate with the target audience by granting them the ‘enjoyment’ of achieving specific political goals or fears should it not happen (Fairclough, 1992; Stavrakakis, 1999; Glynos and Howarth, 2007). The ability to do this is a function of power: social or political elites are in a privileged position compared to common people (Carragee, 1993), *e.g.*, when analyzing Margaret Thatcher’s political discourse, Hall (1988) claims it re-articulated elements drawn from conservative, neo-liberal and populist meta-discourses. Media outlets also create important interdiscursive texts (Carroll and Hackett, 2006), *e.g.*, when covering official events and stories, newspapers often use signifiers and informal and non-technical language styles that resonate with ‘popular experience and mythology (Fairclough, 1992: 109). This ‘in-formalization’ of formal discourses increases readership and entices readers to ‘go along’ with the discourse (Hall et al, 1978; Fairclough, 1992).

Some discourses become hegemonic, *i.e.* the objects and subject positions they establish become taken-for-granted. For Gramsci (1971) capitalism is a hegemonic discourse in the West and is supported by signifiers such as free markets, minimum wages, and full employment. Discourses create subject positions, *e.g.*, employer, employee, with corresponding role expectations. However, the existence of multiple discourses offers various subject positions and identities to individuals or social groups which are precarious: they have no essence beyond the discursive order generating them (Laclau and Mouffe, 1985; Spence, 2007). Role expectations for subject positions can produce an over-determined reality: a totalizing conceptualization of the



world immune to other interpretations but perpetual competition between advocates of different discourses prevents closure and totalisation. Thus, meanings and identities are only partially fixed and are contingent. Moments of dislocation during crises or conflicts can produce identity crises precipitating subjects to search for reforms to, or to affirm, their sense of identity linked to a discourse.

Challenges to a discourse may start with people's dissatisfaction with the existing social order but public contestation, normally in the name of an ideal and often expressed through media campaigns and reporting, is critical (Laclau, 2005; Glynos and Howarth, 2007). The media may sustain the hegemony of social elites (Carragee, 1993) but rival movements also use it to challenge this (Carroll and Hackett, 2006). For a media discourse to successfully challenge a hegemonic discourse, scholars of the media and social movements suggest it must 'connect' and 'convince' the target audience that a great injustice is being done and must be prevented (Benford and Snow, 2000; Gamson, 1992). To do so, according to Snow and Benford (1988), the discourse must have: empirical validity, i.e., be able to be tested; experiential commensurability, i.e. be consistent with lived experiences of the target audience; and narrative fidelity, i.e., conformity with their 'cultural heritage'. At a personal level, it should invoke fears that current arrangements, if left unchanged, will prevent the realization of objects such as 'justice' (Glynos and Howarth 2007: 130; Žižek 1989, 254; Stavrakakis 1999: 100).

For Laclau (2005) populism is a means of political change. Crowds exult and intensify increase member's emotions and a sense of irresistible power but, to increase their arguments' potency, they need organisation, i.e., a leader perceived as from the group, a clearly defined purpose, and a dichotomous antagonistic division of society around two incompatible chains of equivalence. Given the difficulty of relating concrete signifiers to diverse groups, ideally signifiers should be sufficiently broad, elusive or ambiguous to penetrate discourses built around the nodal points, and hence entice more groups into the hegemonic struggle (Stavrakakis, 1997). However, the more groups and demands are incorporated the less clear the enemy and mission becomes, and the less determinate the outcomes. Given the multiplicity of potential and actual discourses, and the broad range of groups and demands attached to a social movement, the likelihood of disappointment for some is great. Hence, discourses, whether dominant or not, are unstable and contingent.

Laclau and Mouffe's discourse theory can deepen understanding of the social construction of valuation and its linkage with accounting and political change for several reasons. First, the power of accounting in shaping 'reality' is best understood at its margins (Miller, 1998), *i.e.* where accounting connects with other ideas to create an object's value. In this case, it helped reveal how disparate signifiers, drawn from different meta-discourses, became connected with accounting signifiers such as "market value" or "value of inventory" to form an ordered discourse creating the value of an object. Second, the dynamics of valuation become visible when valuations are contested (Mennicken and Power, 2015). Laclau and Mouffe's theory and Laclau's analysis of populism helped identify how this and other factors contributed to the creation of a social movement and new identities, especially of judges. They helped understand how rival political groups articulated competing discourses, how each dominated the social landscape at various periods, and the role of the media therein (Contu, 2002; Willmott, 2005; Bommel and Spicer, 2011; Kenny and Scriver, 2012; Contu et al., 2013). Lastly, an important aspect is the "the relationship between calculation, emotion, affect, and valuation" (Mennicken and Sjögren, 2015:4). Laclau and Mouffe's theory and refinements by the Essex School links discourse with social psychoanalysis



(especially Lacan, 1977), which helped reveal linkages between accounting and human emotions such as fear, joy and hopes.

#### 4. Data Collection and Analysis

The research stems from a study<sup>v</sup> on the judiciary's struggle for independence since Pakistan's birth. The PSM case soured relationships between the executive and judges leading to a social movement for an independent judiciary. The role valuation and associated discourses played therein, and the judicial and political aftermath intrigued us.

Management and organizational research employing Laclau and Mouffe's theory (1985) is growing but operationalizing the theory is fraught with problems. Initially, Laclau and Mouffe provided little guidance on methods and many papers utilizing this approach lack detail of the research protocols followed (Walton and Boon, 2014), leading to accusations of one-sided deductiveness, *i.e.* vague interpretive methods to deduce discursive themes from the data (Keller, 2015; Glasze, 2007). Post-structural research, of which discourse theory is part, spurns notions that research methods are neutral and independent of theory (Glynos and Howarth, 2007: 201) but this does not mean 'anything goes' (ibid: 2007). A research paper is itself a discursive exercise. The purpose is to persuade or convince the reader of its findings. A combination of interviews and document analysis are frequently used research methods in discourse theory allied to conventional qualitative research methods (e.g. Barros and Castagnola, 2000; Bastow and Martin, 2003). For document analysis, Glasze (2007) advocates a means of linguistic analysis, lexicometrics, which measures the frequency of lexical items in a corpus of data and their increase/decrease over time to gauge the actual language-in-use combined with a qualitative analysis of narrative patterns. This mitigates against interpretive themes not being "factually" represented and can capture the nuances of discourses critical for discourse analysis. Hence, this research adopted a combined approach (Glasze, 2007) utilising the five-step discourse analysis of Walton and Boon (2014). Section 5 covers the first stage on determining context.

The second step constructed and delimited the data. An important data source was newspapers' accounts of the PSM sale. Lexis Nexis was used to search newspaper items containing the words 'Pakistan Steel Mill' from March 2005 to December 2007. Relevant editorials, opinion articles and news items in major newspapers not in the Lexis Nexis database were also searched. After discarding peripheral and marginal news sources the formal analysis concentrated on the 404 items, with a word count of 233,268 in four major national newspapers – The News, The Nation, The Daily Times, and Dawn - the largest circulation English language newspapers in Pakistan. They vary in age, editorial position and political affinities. The News, part of the largest Pakistan media house, the Jang Group, was formed in 1987 and has the largest circulation. Its editorial policy is normally moderately conservative. The Group also owns an Urdu language newspaper and a TV channel. It is regarded as independent and has had a troubled history with both major opposition parties, the Pakistan Muslim League (PML) and Pakistan People's Party (PPP), when it criticised their governments. The Nation, part of the Nawa-e-Waqt group, was formed in 1987. It is right-wing and conservative and takes pride in its 'bold' editorial policy of protecting values it cherishes. It has an affinity with the PML. The group also owns an Urdu language newspaper and a TV channel. The editorial policy and political affinities of the Daily Times, formed in 2002, is the opposite of The Nation. Owned by an industrialist, Salman Taseer, a friend of General Musharraf, it is liberal and secular. Dawn, formed in 1942, is the oldest Pakistan newspaper. Owned by a large media group, the Dawn Group, it is relatively secular and liberal with a

reputation of being independent, balanced and moderate. The Group also owns a TV channel and publishes a popular weekly magazine, the Herald. These four newspapers were selected as they provide critical coverage of national affairs, including the privatization of PSM, and have diverse editorial policies and political affinities.

The third step identified major events in the PSM sale controversy. The analysis of press coverage revealed three distinct periods: before the PSM bid; the challenge of the privatization decision in the SCP; and the SCP decision and its aftermath. This timeline indicated that the PSM sale was a nodal point subject to diverse interpretations in two antagonistic discourses. Accordingly, each newspaper article was categorised as pro (P)- or anti-privatisation (A) or a mixture of both (P/A) (see Table 2).

The fourth step identified the organisation of the antagonistic discourses. Coding, done independently by two authors, identified the discursive themes and their associated signifiers to construct chains of signification in each discourse, and the frontiers of antagonism. Key signifiers, including synonymous sub-signifiers (Halliday, 1987) in news items in each period; the meta-discourse they drew from, e.g. globalisation, nationalism; accounting; corruption; and their presentation style (informal vs formal/official) and genre (non-technical vs technical/'scientific') were coded (Fairclough, 1992). This yielded a list of agreed codes (detailed in Tables 3, 5, 6, 7 and 8). To empirically anchor the discursive themes, the sub-signifiers (columns 3) were organised within key-signifiers (columns 2) and attached to the meta-discourses they drew from (columns 1). As expected, many key signifiers were floating. For example, each discourse gave accounting signifiers, e.g. 'annual profit' and 'assets', different meanings drawn from their different meta-discourses. The 'informal' style and a 'non-technical' genre of the anti-privatization signifiers contrasted sharply with the 'formal' style and 'techno-scientific' genre in the pro-privatization discourse. The coding was then discussed with colleagues to gain greater inter-subjective agreement on the robustness of the discursive themes and the signifiers constructing them (Glynos and Howarth, 2007). Then, to check the intensity of each signifier in press reports, and to test the robustness of the qualitative analysis, a lexicometric analysis was conducted (Glasze, 2008). This counted the frequency sub-signifiers (columns 3) in each discourse appeared in each newspaper during the three time-periods (see columns 4 to 8 for the counts). This provided insights on the temporality of meaning created by key signifiers.

A criticism of many discourse theory studies is whilst claiming discourse is socially embedded, their analysis of texts is not empirically related to key events and actors involved<sup>vi</sup> (Breeze, 2011). The fifth step addresses this by identifying how these discourses shaped or reinforced beliefs and actions of key actors prior to, during and after the PSM decision. They included media personnel, the lawyer who took the case to the SCP, and the judges who heard the case. Here interview data from prior research by one of this paper's authors on the judiciary's struggle for independence since Pakistan's birth was crucial (reference anonymised). Although this was theorised differently (it used institutional theory) its qualitative analysis<sup>vii</sup> and results helped link the discourse analysis to key events and players prior to, during and after the duration of the case. The legal interviews covered actual and retired judges of the superior judiciary (Supreme and High Courts) who took or refused to take oaths of allegiance to the executive in 1999 and 2007; legal advisors and members of Musharraf's law ministry; the legal team of the CJP; leaders of the Lawyers' Movement; and young lawyers who wrote in newspapers during and after the Lawyers' Movement. The media interviews covered owners of newspapers and TV channels, TV analysts and presenters, and journalists in leading English and Urdu language newspapers. Military officials, retired and serving, included: those present (and thus supportive) when Musharraf

dismissed Iftikhar Chaudhry as CJP; those posted as ambassadors abroad during Musharraf's regime and those who resisted or disapproved of his judicial assault. Lastly, human rights activists, some associated with non-governmental organizations such as the Human Rights Commission of Pakistan or Aurat Foundation, were interviewed. 82 individuals were interviewed on average for 1.6 hours in 110 sessions. Later, during the writing of this paper, two members of the bench and the lawyer who first challenged the PSM privatization in the SCP were interviewed again to clarify certain points. Also, documents from primary (i.e., legal bodies' websites) and secondary sources (e.g., magazines, popular and academic books, conference proceedings, academic journals, blogging websites, and photographs) were studied. The analysis gave a rich understanding of the events, processes, and outcomes of the discursive battle that created new subjectivities, interests and frames of actions.

## **5. Context of the Pakistan Steel Mills Privatization: Politics, Public Discourse and the Media**

Pakistan's political and judicial history has been troubled, with the military ruling for more than half of its life (1947-2017). A subservient judiciary validated unconstitutional military takeovers every time (Muhammad, 2015). Except for a few years of democratic rule, the media was subjected to strict regulation and control. To the dislike of many, especially the Hindu majority, British India was divided along religious lines into two states (India and Pakistan) (Rabbani, 2005). Territorial disputes arose immediately, resulting in armed clashes with the better equipped Indian Army. The insecurity of the Pakistani people, inscribed through the discourse that created Pakistan, played a major role in the military dominance: it portrayed itself as the only institution that could protect Pakistan from an 'enemy' threatening its existence (Ashraf and Uddin, 2015). It soon became involved in Pakistan politics, when the armed forces' chief became defense minister (Bahadur, 1998). Following unstable civilian governments, the military first imposed martial law in 1958, which lasted for 12 years and then, after a brief democratic period, it was re-imposed in 1977 for another 11 years. Civilian governments challenged this in the SCP claiming it abrogated the Constitution but the SCP ruled that the military take-over was necessary to protect the country from the chaos and damage created by civilian regimes (Pakistan Law Digest (PLD) 1958 SC 533; PLD 1977 SC 657). Civilian rule was restored in 1988 for 11 years but the elected civilian government was subsequently overthrown, with covert or overt army involvement on charges of bad governance and corruption. In 1999, General Musharraf imposed yet another martial law, claiming the civilian government of Prime Minister (PM) Nawaz Sharif and his ruling party (PML-N) was leading Pakistan to bankruptcy and destroying the army, which he termed "the last institution of stability in Pakistan" (Human Rights Watch, 2000). Again, the SCP unanimously ruled in favor of the military coup and even allowed the General to amend the Constitution on the grounds of state necessity (PLD) 2000 SC 869]. Not only did the judiciary accept the takeover of a democratically elected government - the public widely celebrated it. The trend of civilians supporting military takeovers because they perceived civilian governments as ineffective had become an 'established fact' for many (Anderson, 2008).

General Musharraf appointed Shaukat Aziz, a senior Citibank official, to preside over Pakistan's finances in an interim government. On June 20, 2001, Musharraf formally appointed himself as President. His interim government lasted three years and took important initiatives including creating the National Accountability Bureau to investigate corruption during the Nawaz

Sharif and Benazir Bhutto regimes. While both political leaders were in exile the Bureau brought corruption cases against them. Potentially confrontational judges were purged (USAID, 2008) and a reconstituted SCP validated this - the compliant judges included Iftikhar Chaudhry. However, two important institutions, the media and judiciary underwent changes with serious implications for subsequent governments.<sup>viii</sup>

While the political scene was bleak in terms of democratic values, surprisingly, the media became more autonomous and independent in the Musharraf regime following pressure from the USA, which was substantially funding the military to wage war against Islamic militants. Newspapers were relatively free during the 1990's but they relied on government advertisements for revenue. Thus, the government was both their regulator and biggest client. The civilian governments had prohibited private TV channels - the only news channel, infamous for biased and partisan reporting, was state-owned. Given the control the military over the media, its owners tended to defer to military rulers. For example, a close aide of General Musharraf said:

*I know that [owner of a large media group] and his son would often visit Musharraf and embraced him many times ... They would bow five times before shaking hands with Musharraf and extending him requests for hugs, expressing grievance if not hugged.*

In 2002, Musharraf allowed 56 private TV channels to start operations -almost every media group participated. This dramatically changed the media landscape. Newspaper revenues from government advertisements and cover prices, even in the largest circulation newspapers, did not cover printing costs but their losses were dwarfed by revenue from corporate advertisements in TV news channels. Advertisements, which correlated with viewership, became the major revenue source. Media houses gained an independence never enjoyed before, but this brought more competition amongst them they had to air or print news and opinions that attracted readers and viewers. Criticizing the government helped this (Rashid, 2002; Bureau of Democracy, Human Rights, and Labor, 2004). Thus, media houses and newspaper journalists gained greater prominence and political influence. Many journalists started hosting TV news shows generating considerable revenue, which made them less dependent on owners. They could easily move to another media house at higher salaries. They pursued issues they deemed important. A prominent journalist confided:

*[The] owner told me that failing to change my line of analysis would earn me a "Good Bye". Same happened to Talat Hussain (another leading journalist who hosted a news show). Once he was covering something when he was told that Mr. Zuberi -the owner of his channel- had directed could not go on air, to which he said "am I [in charge here], or [the owners name]?"*

Nevertheless, the consumption oriented economic policies of the new civilian/military government, an international economic boom, and unprecedented Western assistance due to Pakistan's role in the 'war against terror', produced exceptional economic growth in Pakistan from 2001 to 2006. So, when the PSM privatization commenced, the government was enjoying tranquil political times. The economy was growing at 6%, the military was part of the regime, and the opposition was weak with its two major political leaders in exile.

In 2005, Iftikhar Chaudhry was appointed CJP. Many lawyers mistrusted Chaudhry's appointment as he had uncomplainingly been part of a compliant judiciary. As a junior justice, in 2001, he endorsed Musharraf having three years of unchallenged rule before general elections were due (Note, 2010; Harvard Law School: 1711) and he swore an oath of allegiance under Musharraf's

first Provincial Constitution Order (ibid). A judicial colleague from when Iftikhar Chaudhry was Chief Justice of Baluchistan High Court described Chaudhry's support for Musharraf's military coup in 1999:

*Chaudhry Iftikhar convinced me to facilitate the coup ... his arguments included how taking the oath was an insignificant routine matter. ... He asked me what good refusal by me could do given everybody else seemed eager to cooperate. The military men, he said, had taken over and wouldn't go back to barracks. He told me to come to terms with the fact that the takeover had already happened. (SCP Judge)*

Several luminaries from the judicial and military communities attributed his appointment to his proactive lobbying. For example, a confidant of Musharraf and his Chief of Staff said:

*One day Chaudhry Iftikhar came to the presidency along with Chaudhry Shujaat –an important politician from Gujarat and the leader of Musharraf's Alliance party. Shujaat was trying to lobby for Chaudhry Iftikhar who insisted that his appointment be hurried.*

SCP lawyers commented:

*Justice Iftikhar assured his subservience to Musharraf and literally fell on his feet to be appointed ... the two became very close ... They were friends and visited each other as family acquaintances.*

*The CJP even used to visit the army house of Musharraf ... along with his wife. They were family friends.*

However, Iftikhar Chaudhry made the SCP more powerful and assertive. The media had widely reported his earlier forceful action in human rights cases concerning women, anti-terrorist measures, corruption, and the environment - in one year he heard petitions of over 6,000 human rights cases (Ahmed and Stephan, 2010: 493-494). He had often come down hard on senior police and civil officials to enforce relevant laws. On becoming CJP, Iftikhar Chaudhry strengthened SCP and media associations, especially when he encouraged Public Interest Litigation through *suo moto* actions,<sup>ix</sup> mostly against government functionaries, primarily acting on media reports (Faqr et al. 2013; note, 2010, Harvard Law Review). While these did not directly challenge the government, they caused embarrassment and exposed governmental inaction, or worse, lawlessness. The growing “nexus” between the media and the judiciary against the government worked to the advantage of both (Khan, 2013). The media raised controversial issues against the government, the SCP took them up, and media coverage of the trial increased both media viewership/readership and the credibility of the SCP. As Khan (2013) commented:

*Before 2007 ... many media houses did not even have dedicated court reporters... In case the court decided a case, the court registrar would call journalists on a fixed day for a visit to the court... [Now] Chaudhry's Courtroom One was a centre for news-hungry media outlets... On average, 50 correspondents of different media organizations packed in there daily to cover judicial proceedings”.*

Two defining moments came when the SCP took up the cases of 563 missing Pakistanis rounded up without charge by intelligence agencies pursuing the “War on Terror”<sup>x</sup> (Ahmed and Stephan, 2010); and the Pakistan Steel Mills’ (PSM) privatization (Mintz, 2008). For once the judiciary

appeared to be implementing its Constitutional mandate of being a watchdog of executive power abuse (Abbass and Jasam, 2009: 8).

## **6. The PSM Privatization Case**

### **6.1 The pre-bid period**

During the 1970s, all major private industries and utilities were nationalized, with adverse economic consequences. Benazir Bhutto and the Pakistan Peoples' Party (PPP) returned to power after the 1988 general election but they never enacted their promise to reverse the nationalisations. Following 1990 elections, the civilian government of Nawaz Sharif initiated privatization programs to reduce losses of state owned enterprises (SOEs), to use the proceeds to reduce burgeoning government debt, and to encourage foreign investment (Haider, 2013). From 1990–93, circa 115 industrial units were hastily privatized, along with two major banks. The 1993 general election returned Benazir Bhutto as prime minister again. Despite its controversy within the PPP and the opposition of some trade unions, by 1996 his government had privatized 20 industrial units, a financial institution, an electric power plant and 12% of shares of Pakistan Telecommunications. Much national wealth accrued to a small group of business people, allegedly favored insiders, and the wealth gap in Pakistan increased dramatically.

Following the 1999 coup, Shaukat Aziz left Citibank to accept General Musharraf's offer of Finance Minister (Dawn, 2003). He had joined Citibank in 1969 and had been its Head of Corporate and Investment Banking for various regions, Corporate Planning Officer, Country Manager for Malaysia and Jordan, Vice President of Citibank USA, and its Global Head of Private Banking. Shaukat Aziz headed the Cabinet Committee on Privatization, the Cabinet Committee on Investment, and the Executive Committee of the National Economic Council.<sup>xi</sup> On becoming PM in 2004, he quickly furthered the liberalisation and privatization of Pakistan's economy following the guidelines and mandates of the World Bank and the IMF, reflecting their belief that governments should not run commercial entities (Zaidi, 1999); and thus obtain further loans and aid from international agencies (Dawn, 2002). Before the Aziz/Musharraf Government, privatizations had raised only Rs. 93B from 1991 to 2001, whereas from 2001 to 2006, they raised Rs. 303B (Frontier Star; 2006d). The privatisations attracted public controversy but not in most political circles. Both main political opposition leaders, Nawaz Sharif and Benazir Bhutto, had supported privatizations during their tenures in government - arguably the privatization case had become hegemonic amongst Pakistan's political elite, and generally it received press support. Having privatized the largest SOEs such as the Pakistan Telecommunication Company, some banks, and fertilizer organizations (Dawn, 2005e), without major controversy<sup>xii</sup>, the Government began the privatization of PSM, Pakistan's largest steel mill, believing it would be straightforward and meet little resistance. This did not prove so.

PSM's performance had improved following a restructuring program in 2001. According to PSM's Chairman, Lt Gen. Abdul Qayyum (retd), in the financial year 2004-05, PSM achieved new records for productivity, sales, and profit: sales of Rs. 32 billion exceeded its target of Rs. 26.79 billion and after tax net profit was Rs. 6 billion. In US dollars, PSM revenues were \$510 million, earnings before tax and interest \$170 million, and net profit \$108 million. From 2003-2005, PSM wrote off Rs. 9 billion losses accumulated over three decades, and its liquidity rose from Rs. 0.41 billion to Rs. 8.23 billion (Balochistan Times, 2005).



The Privatization Commission's call for Expressions of Interest in purchasing 51-75% of shares in PSM, thereby gaining management control, resembled preceding calls. The Commission advertised for a financial advisor and nine parties submitted technical and financial proposals. Citigroup Global Markets, a CitiBank subsidiary, and Arif Habib Securities (subsequently a PSM buyer) won the contract to value PSM and to advise the government. Citigroup was aided by Corus Consulting Limited, UK; Orr Dignam and Co.; and Price Waterhouse Cooper, Pakistan (PWCP) (Frontier Star, 2006a).

The Commission decided to sell 4,500 of the 19,000 acres of land owned by PSM in the privatization, and sell the remainder separately (Daily Times, 2006a). The PSM complex included a 165 megawatt power generation unit, 110km. of metal roads, 70km. of railway track, a water treatment plant, and a jetty for raw material imports (The Nation, 2005b). The mills' annual capacity was 1.1M. tonnes and it enjoyed a captive domestic market: demand historically exceeded local supply.

**Table 1**  
**Examples of Signifiers in Pre-bid Period**

Signifiers	Examples	Source
Economic Growth	Following sustained improvements in Pakistan's macroeconomic environment, the country's demand for steel is expected to grow further. PSM is uniquely positioned to benefit from this as the infrastructure to cater for capacity expansion is in place.	The Nation, November 17, 2005
Profitability	The chairman said it was good that PSM was no longer producing losses and had started showing profit. "This profit making shows that the Mills' privatization would attract a lot of attention of the local and foreign buyers." He claimed that PSM was operating at 97 % of capacity and the projected savings would exceed US\$200 million by end of the fiscal year 2004-5, a benchmark never achieved by any industrial concern in the country's history.	The Nation, March 14, 2005
Strategic Imperative	All the nine pre-qualified investors for PSM have undertaken to the government that they will increase the mills' annual capacity from 1.1 million tonnes to 3 million tonnes and beyond after its privatization. Informed sources told Dawn that the new strategic buyer of the mills will expand the facilities by 2 to 3 times as present domestic steel consumption stands around 5 million tonnes per annum.	Dawn, December 22, 2005

The governments' discourse was transparent (Cappella and Jamieson, 1997) and it had three main signifiers. The accounting signifier 'profitability of PSM' became attached to broader non-accounting signifiers, 'economic policy', and 'strategic imperative' (see Table 1 for examples). Together, they reflected the government's meta-discourse on policy, namely a neo-liberal globalized economy to improve efficiency and competitiveness, to acquire foreign

investment and expertise to secure growth, and to make SOEs profitable in conventional accounting terms. The government argued it was wise to sell PSM, as Citigroup advised, to take advantage of its temporary recent profitability attributable to rising international steel prices, growing national steel demand, and a lay-off of *circa* 35% of the workforce during 2000-2005 (Citigroup, 2005). The key signifiers were supported by several synonymous non-accounting sub-signifiers, e.g., the main signifier ‘economic growth’ became supported by a sub-signifier that ‘foreign direct investment’ in the steel industry was required. PSM’s ‘profitability’ was portrayed as fragile and a threat to national finances if it ceased. The sale would yield a handsome sale price and yield benefits from another main signifier, namely a ‘strategic buyer’ who would make ‘future investment in Pakistan’s steel industry’ for ‘capacity building’, ‘technological upgradation’, and ‘modernization and efficiency enhancement’; and thereby ‘reduce the gap in steel demand and supply’ by ‘increasing supply’. Thus, the government presented itself as a competent entity (unlike previous civilian governments) willing to take strategic (as opposed to short-term) decisions necessary to lead Pakistani people towards economic prosperity. Thus, the pro-privatization discourse connected with the broader discourse of economic prosperity and its link to national security) justifying the military takeover.

**Table 2**

**Pro- and Anti-privatisation News Items in Selected Newspapers Before and After Bids for PSM, and post SCP Decision**

	The Nation				Dawn				Daily Times				The News			
	Pro (P)	Anti (A)	P/A (pro- & anti-)	Total	Pro	Anti	P/A	Total	Pro	Anti	P/A	Total	Pro	Anti	P/A	Total
Pre-Bid	8		2	10	18		2	20	9			9	1			1
Pre-Verdict	3	18	6	27	2	23	6	31	3	6	8	17	2	17	11	30
Post-Verdict	2	90	5	97	1	18	5	24	1	76	4	81	2	51	04	57
Total	13	108	13	<b>134</b>	21	41	13	<b>75</b>	13	82	12	<b>107</b>	5	68	15	<b>88</b>

Initial press coverage of PSM’s privatization was relatively slight and supportive (see Table 2). It was highest in The Dawn and almost totally ignored in The News. Almost all the news items reproduced the signifiers in the government’s pro-privatization discourse (see Table 3). The style was formal and technical (Fairclough, 1992): of the 20 times PSM’s profitability was mentioned, only twice was it described informally, e.g. as a ‘white elephant’ (see Table 3). Almost no data items contradicted the pro-privatization discourse, partly because General Musharraf had prolonged the political exile of the opposition leaders, Nawaz Sharif and Benazir Bhutto, through Constitutional amendments barring them participating in the 2003 general election (Election Observer Group Reports, 2006). In their absence, the two main opposition parties lacked a clear strategy and largely adopted a wait and see policy. Resistance by PSM’s workers was localized and focused on negotiating a right to participate in the bidding and setting the privatization terms to ensure employees’ financial and job security post-privatization (Dawn, 2006a). The data analysis (news reports) suggested the pro-privatization discourse was still ‘hegemonic: the privatization was hardly challenged.

**Table 3**

**Pro-Privatization Discourse in Newspapers During Pre-bid Period (1<sup>st</sup> March, 2005 to 30<sup>th</sup> March, 2006)**

Meta-Discourse	Main-Signifier	Sub-Signifiers		Pre-bid Newspaper Coverage (Count)				
				The Nation	Dawn	Daily Times	The News	Total
Economic Globalisation Strategy	Economic Growth through Privatizations	Foreign direct investment (FDI)		1	-	-	-	1
		GDP growth/progress/development		1	-	2	-	3
		<b>Total</b>		<b>2</b>	<b>-</b>	<b>2</b>		<b>4</b>
Accounting	Profitability	Poor PSM financial performance justifies privatization	White/dying elephant	-	2	-	-	2
			Burden/liability/drag on national kitty	-	5	1	-	6
			Loss-making entity	-	4	1	-	5
		Current good economic performance (essential to attract a good bid.)		2	4	1	-	7
		<b>Total</b>		<b>2</b>	<b>15</b>	<b>3</b>	<b>-</b>	<b>20</b>
Efficiency & competitiveness	Strategic Imperative	Strategic/new investor/buyer /sale		3	5	5	-	13
		Injecting/pouring/investing capital/money/investment		3	6	1	-	10
		Expanding/expansion of PSM's capacity/output		3	12	1	-	16
		Technological up-grading/modernization/enhancement		2	2	1	-	5
		Efficiency enhancement of PSM		-	3	-	-	3
		Continued utility of PSM for steel production		-		1	-	1
		Steel supply/production increase		-	4	-	-	4
		Steel sector growth and increased competitiveness		-	5	-	-	5
		Steel demand/consumption better served		1	7	1	-	9
		<b>Total</b>		<b>12</b>	<b>44</b>	<b>10</b>		<b>66</b>
		<b>Grand Total</b>		<b>16</b>	<b>59</b>	<b>15</b>	<b>-</b>	<b>90</b>

The government fixed a reserve price for PSM, based on Citigroup and PWCP advice, and invited Expression of Interests. *Circa* 19 firms responded but only 6 qualified for the final bid. They formed two consortiums of 3 firms (The Nation, 2006a). On March 30, 2006, the Privatization Commission accepted the bid of Rs. 21.68B (US\$362M.) by the consortium led by a Russian firm for a 75% stake in and management control of PSM. The Privatization Minister, Awais Leghari (assigned the privatization portfolio for a few days) quickly scrutinised the bids before issuing an acceptance letter.

## 6.2 Challenging the Privatization in the Supreme Court

The bid price gave opposition parties an opportunity to initiate an anti-PSM privatization discourse. The Parliamentary Leader and Deputy Secretary General of PPP, Mian Raza Rabbani, issued a press statement condemning the privatization at a ‘throw away price’ below market value and the deal’s lack of transparency (Balochistan Times, 2006a). Virtually all newspapers, regardless of their ideological and political inclinations, covered this. *The Nation*, a conservative and pro-opposition newspaper, printed an editorial questioning the price paid; *Dawn*, a moderate newspaper, reported that several commentators called the price “peanuts”; *The News*, which had poor relations with opposition parties when in power and had ignored the pro-privatization discourse, reported the anti-privatization discourse, as did the Daily Times, a newspaper owned by a close friend of Musharraf. In the new liberalized media environment, no newspaper could ignore an important issue covered by a competitor.

The ‘sale of PSM’ remained the central nodal point of the emergent anti-privatization discourse but it attached new meanings to pro-privatization discourse signifiers (see Table 4). The accounting signifier of a ‘profitable’ SOE yielding hefty sale proceeds from a ‘strategic’ buyer became a ‘strategic’ national asset being sold below its ‘market value’ at a ‘throw away price’, making it a ‘gift to the buyers’; and ‘profitability’ became a reason why PSM should not be sold ‘to private hands’ when just beginning to make a ‘return on initial investment’. For example, The Nation, sympathetic to the opposition, wrote:

*The classical argument for selling state entities ... 'Running of businesses not being a State's function', does not hold ground when it comes to strategic national assets and institutions. ... This government ... is here to correct the poor management of its predecessors. It is ironic that the farsightedness in creating national assets, of those very people whose mess they claim to be cleaning up, is proving to be their salvation (The Nation, 2006c).*

*... one cannot help ask the billion dollar question; Is Pakistan up for sale? National assets take years to be built, developed and brought in a shape that they could contribute towards the national economy.... It has taken the Privatization Commission just a few years to dispose of our family silver ... Has someone worked out how much of our resources and man-hours were put in to build the assets like Steel Mills ... the price for which these are being sold ... has shocked all citizens .... Despite the regime's claims about their record foreign exchange reserve, it desperately needs dollars to finance its burgeoning trade deficit. Selling national assets was, perhaps, the easiest way out of that situation. They have done it by putting Pakistan on sale (Zahid, 2006).*

**Table 4**  
**Anti-Privatization Signifiers Post-Bid**

Signifiers	Examples	Source
Strategy	If this loot sale of our strategic assets, without pausing and pondering even for a moment as to who are the buyers up front and in the background, is not against the 'national interest, tell me what is?	Zahid, The Nation, April 9, 2006
Profitability	It should also not be forgotten that Steel Mills has been turned around, and now is not only profitable, but has returned the entire investment made in it by its earnings.	The Nation, April 01, 2006b
Throw Away Price	<p>Pakistan's only integrated steel mill in the public sector, which has been operating on optimum capacity for at least last three years, was passed on to a consortium of foreign and local investors at a price that is being called "peanuts" and a "no price at all."</p> <p>Critics—including, politicians, independent economists, MNAs, experts from industry and the mill's workers' union assert that this is too small a price for such a huge enterprise.... why privatize at such a low price? ... The net worth of the PS assets is several times that amount.</p>	<p>Ghausi, Dawn, April 7, 2006</p> <p>Zaidi, Dawn, April 17, 2006</p>

The discourse gained public attention. Barrister Zafarullah Khan, a public interest litigant, recalled:

*I was sitting in a coffee shop when I read in the newspaper about PSM and how it is being sold so cheaply.... It reminded me of my days when I was in England doing my bar exams ...and a friend of mine told me that ...a large steel mill has been built in your country... I put together all news clippings that I could find and filed a petition in the Supreme Court of Pakistan. To be honest, I wasn't sure that Supreme Court would take notice but surprisingly, it did.*

His pessimism was reasonable. The Sindh High Court had dismissed PSM's Workers Union petition against the PSM privatization on the bid day (PLD, 2006, SC 697). However, to Khan's surprise, the SCP Registrar invited him to explain why the SCP should hear his petition. The media coverage was an influence. A SCP judge who sat on the bench said:

*To be honest, the media played a big role in our decision to hear the case. 80% of the news stories ... were against the sale.*

The SCP decision increased media coverage. The litigant described how:

*When I reached the SCP office, I was surprised to find there was a large bench of Supreme Court (judges) waiting to hear my petition...not that I have never presented a case before a large bench earlier ... but still it was a big deal! ...The government had brought in the who's who of the legal fraternity to defend the case. All the top lawyers were there.*

The SCP appointed a prestigious lawyer (a former governor of Sindh) to check the "facts" including the accounting numbers in the petition, all of which were drawn from newspaper reports.

These were easily corroborated. Since the government had announced 14,500 acres of land with a market price of \$800M would be retained, it was deduced that the market value of the land sold (4500 acres) was \$250M. Given the sale price of \$362M, this meant PSM and its assets, including plant and machinery, were sold for \$112M. This was then compared to PSM's last annual profit of \$110M to conclude that PSM had been sold for a 'paltry price'. This relatively simple calculative logic, based on a valuation using historical data, in one move, challenged the military-backed government's claim it was corruption free, and potentially fractured the discourse that it was leading people towards economic prosperity.

The anti-privatization discourse invoked horror fantasies, that the privatization would make Pakistan insecure, selling national assets for paltry sums would make it poorer; and these assets would go to people who could damage the economy. Opposition parties in the National Assembly fueled these horror fantasies. They fed on the signifier 'corrupt' to delegitimize the government (allegedly a purchaser, Arif Habib, was an associate or friend of the PM) and they urged the PM to resign for conducting 'the biggest ever robbery on the national exchequer' (Frontier Star, 2006b). On April 19, 2006, they cornered the government and argued the PSM privatization should be rejected because 'no one, including a general, should sell national assets at throwaway prices in a fraudulent privatization scam' (The Nation, 2006d). Concerns were raised about passing the 'family silver' and 'the mother industry' into 'wrong hands' who might 'discontinue steel production' and hence 'damage downstream industries' and eventually national gross domestic product (GDP), and thereby jeopardize 'national security and interests'. Newspapers carried headlines such as "The mill with 20 billion annual profit sold for 21 billion." There was huge media coverage of this parliamentary onslaught:

*Most opposition speakers said the Pakistan Steel Mills Corporation was sold too cheaply in what they saw as manipulated bidding for much costlier assets and even called into question the desirability of privatising such a vital unit...[ which they called the] "mother of other industries" ... Mr. Aitzaz Ahsan pointed to [the] ... key position of the PSM for exports ... and said it should have been spared the sale as one of "commanding heights of the state which can't be given to others"... the Steel Mills[are] ... a sacred trust and an "ornament of the mother (state) ... being sold during the mother's lifetime." ... Minister in charge for privatization, Awais Ahmed Leghari, rejected the opposition's allegations as baseless ... insisting the government got a good price for it, one that was higher than the reserve price ... Mr Leghari, whose speech was repeatedly disturbed by opposition protests, called the PSM sale timely and in the national interest and described most opposition criticism as "aerial firing" designed to mislead the people (Asghar;2006a).*

The government responded by attacking the anti-privatization discourse's signifiers by reasserting their meanings in the pre-bid pro-privatization discourse, namely that PSM's transient profitability was an opportunity to sell it at a 'decent sale price' and 'inviting foreign direct investment' from a 'strategic buyer' would 'boost the national economy and GDP' and 'meet national steel demand'; and PSM's current profitability was mainly attributable to a heavy duty on steel imports that would be drastically cut after privatization (Balochistan Times, 2006b). They realized the significance of valuation and how challenges to its accounting calculations had captured the interest of otherwise disinterested segments of society. Hence, they introduced new technical and complex valuation signifiers that highlighted PSM's sale as a 'going concern'. They stressed how Citigroup and PWCP had derived PSM's final valuation by three globally credible and sophisticated valuation methods: Discounted Cash Flow Analysis (DCF) with a 12% discount rate (valued PSM between US\$ 407-464 million); Public Multiple Analysis,<sup>xiii</sup> (valued PSM between US\$ 307-406 million); and Precedents Transaction Analysis<sup>xiv</sup> (valued PSM between US\$



389-501 million). A reserve price of \$375M was reached based on a ‘fair value’ determined by averaging the three methods’ results and then deducting 10% from that average figure. The Cabinet Committee on Privatization, whilst approving the reserve price, gave precedence to the ‘fair value’ determined by the DCF method. The successful bidders’ final bid was \$362M, based on technical valuations by KPMG Pakistan (KPMGP). PSM was thus sold at a price calculated on professionally accepted methods.

From the sale price announcement to the trial, the press reported the government arguments, albeit less than previously (see Table 2). The reduced coverage was partly because the government response brought little that was new - it merely reproduced the original formal, complex and technical pro-privatization signifiers supplemented by the new accounting signifier, valuation (see Table 5). The press knew the government response would not appeal to most readers. They merely reproduced the formal style and technical genre of the government’s pro-privatisation discourse. For example:

*Mr. Awais Ahmed Khan Leghari, Federal Minister for Privatization and Investment ... clarified that as far as land evaluation was concerned ... the plant has been sold as a going concern ... [He added that] out of 4,457 Acres of Land the Core Steel Plant occupies only 1.034 Acres. 1,733 Acres of land was for slag dumping, slag granulation and skull breaking etc. This land cannot be used for any other purposes ... Standard methods used for valuation were Discounted Cash Flow (DCF) Basis, Comparable Companies Analysis and Precedents ... However, DCF is the most recognized method to value the concerns on a going basis. The financial projections were prepared [on] ten years basis with sensitivity analysis. ... The value of US \$ 362 million received from the highest bidder for a 75 % equity stake (or US \$ 483 million on 100 % basis) reflected the value of PSM on a going concern basis, it took into account its ability to generate cash flows in the future ... The Minister further stated that PSM received the highest offer above the approved price, therefore, it could not be termed a sale at a throw away price (Frontier Star; 2006a).*

**Table 5**

**Pro-Privatization Discourse in Newspapers in the Period Post-bid to the Trial (1<sup>st</sup> April, 2006 to 23<sup>rd</sup> June, 2006)**

Meta-Discourse	Main Signifiers	Sub- Signifiers	Trial Period Newspaper Coverage (Count)				
			The Nation	Dawn	Daily Times	The News	Total
Economic Globalisation Strategy	Economic Growth through Privatizations	Foreign direct investment (FDI)	4	1	3	2	10
		GDP growth/ National progress, development and security	4	1	1	-	6
	<b>Total</b>		<b>8</b>	<b>2</b>	<b>4</b>	<b>2</b>	<b>16</b>
	Profitability	Poor PSM    White/dying elephant	-	1	1	2	4

Accounting		performance	Burden/liability/drag on national kitty	3	3	2	1	9
			Loss-making entity	2	1	1	1	5
		Recent good financial performance (of PSM) ideal to attract a decent bid price)		-	1	-	1	2
	Valuation	Going concern/ DCF/replacement value/sensitivity analysis/precedents transaction analysis/public multiple analysis	3	-	4	8	15	
	Total			8	6	8	13	35
Efficiency & Competitiveness	Strategic Imperative	Strategic/new investor/buyer /sale		-	1	-	-	1
		Injecting/pouring/Investing capital/money/investment		3	1	2	-	6
		Expansion of PSM’s capacity/output		3	2	2	1	8
		Technological up-gradation/modernization/enhancement		-	1	1	1	3
		Efficiency enhancement of PSM		-	-	2	1	3
		Continued utility		-	2	1	1	4
		Steel supply/production/manufacturing increase through privatization		-	-	2	-	2
		Industry growth/development		2	-	-	1	3
	Total			8	7	10	5	30
	Grand Total			24	15	22	20	81

In contrast, press coverage of the anti-privatization discourse was greater in all four papers (see Table 2). As Table 6 indicates, the pro-privatization discourse's main signifiers remained but acquired new sub-signifiers granting alternative meanings. The anti-privatization discourse's meta-narrative stressed nationalism not the merits of a globalized economy. Thus, the privatization signifiers gained sub-signifiers portraying dubious foreign ownership as threatening national security and sovereignty. The accounting signifier of profitability acquired sub-signifiers claiming PSM made positive returns to the exchequer, with the prospect of more to come, thence it is a national asset. The newly introduced accounting signifier of valuation had sub-signifiers reproducing critics' alternative valuation based on market prices of PSM's land. The meta-discourse of efficiency and effectiveness built on the signifier of PSM being a national asset attached to sub-signifiers claiming it was being dissipated by being sold cheaply, with little consideration of continuing production or domestic industries' needs. However, the anti-privatization discourse gained new signifiers, namely employee concerns (somewhat limited press

coverage and the issues disappeared post-trial); and, more importantly, suspected corruption, denoted by sub-signifiers suggesting fraudulent transactions with favored parties. This connected the anti-privatization discourse with popular meta-discourses of a corrupt state and put a dagger into the heart of the government's claim of honesty and competence. Such allegations fed the media's desire for sensational stories with popular appeal. This was reinforced by the style and genre of the anti-privatization discourse on valuation. It was more informal; less technical; drew on common vernacular, and had more popular appeal than that of the government's experts which was complex, abstract and difficult for laypersons to understand.

**Table 6**

**Anti-Privatization Discourse in Newspapers in the Period Post-bid to the Trial (1<sup>st</sup> April, 2006 to 23<sup>rd</sup> June, 2006)**

Meta-Discourse	Main Signifier	Sub-Signifiers	Newspaper Coverage (Count)				
			The Nation	Dawn	Daily Times	The News	Total
Economic Globalisation Strategy vs. Nationalism	Privatization Policy	National security/interest at threat	7	9	4	6	26
		Wrong hands - foreign players and criminal national bidders					
		Economic imperialism	-	-	1	1	2
			7	9	5	7	28
Accounting	Profitability	Profitable national assets	3	2	2	4	11
		Return on initial investment in PSM	-	3	1	5	9
	Market Valuation	PSM sold at throwaway price/at price of peanuts or scrap/ at paltry price/PSM privatization a gift to buyers	18	15	6	11	50
		Market/real-estate value/valuation/price of PSM assets/land	5	19	3	7	34
	<b>Total</b>		26	39	12	27	104
	National Strategic Asset	PSM – a strategic national/state /public asset/family silver	8	7	3	5	23

Efficiency & Effectiveness		Poor impact on downstream industries caused by privatization of the mother industry of steel	5	4	2	3	14
		No assurance of continued steel production		2	1	-	3
	<b>Total</b>		13	13	6	8	<b>40</b>
Humanitarian re Labour	Employee Concerns	Employees' concerns and disapproval	2	3	-	-	5
		Protests from employee and trade unions	1	4	-	-	5
	<b>Total</b>		3	7	-	-	<b>10</b>
State Corruption	Corrupt Motives	Sold to favorite parties/ planned scam/fraud/conspiracy to loot taxpayers' money/earn kickbacks	8	4	5	7	24
	<b>Total</b>		8	4	5	7	<b>24</b>
	<b>Grand Total</b>		57	72	28	49	<b>206</b>

## 6.3 The Trial

*To be honest, the media played a big role in our decision to hear the case. 80% of the news stories ... were against the sale. (A judge on the bench)*

The anti-privatization discourse's horror fantasies and accounting valuations reproduced in the media influenced the SCP Judges' decision to hear the petition against the privatization on April 24, 2006, five days before its transfer to private buyers. A judge recalled how the anti-privatisation's accounting signifier on profitability and valuation raised concerns:

*We asked the government to produce the notification under which PSM is being sold. They produced a 1997 notification where PSM was included in the list of entities to be privatized by Privatization Commission. Now in 1997 the mill was making losses but in 2005 it had made decent profits. It was a national asset.*

The SCP instructed the government to delay the transaction until the petition was decided, which added credibility to the anti-privatization discourse.

The legal trial had two parties - the government and their financial experts, including Citibank, PWCP and KPMGP, and the opposition parties, PSM employees and trade unions. As the anti-privatization discourse gained traction in the media, it split the social space into two -

those upholding the nation's interests and security, and those who were not. It was a moment of dislocation for many, including social groups otherwise skeptical of previous civilian governments currently in opposition. For example, Sajjad Ali Shah, a retired CJP, who had had major disputes with both opposition parties when in power, wrote an article reproducing the anti-privatisation's accounting signifiers:

*The sale process was rushed and (a) bid ... was accepted for a meager amount of 362 million dollars ... [it] is obvious that the mill has been ... presented as gift to the intended beneficiaries ... National assets ... making profits, are being sold at cheap prices to foreigners. (Shah, 2006)*

PSM employees and trade unions joined the protests:

*More than 50 labour, political, social and human rights organisations have expressed their strong reservations over the process of the privatization ... and described the sale of the national asset as 'the biggest scam' in the country's history ... at a one-day consultative meeting ... under the auspices of the Labour Education Foundation under the title: Steel Mill Privatization – A Fraud ... [They] deplored that the PSM had been sold for an amount which made just two and half years' tax it paid annually ... they demanded withdrawal of the decision to privatise the PSM and institution of a corruption case against those involved (Dawn, 2006b).*

Eleven unions opposed the privatization and a newly formed PSM employees' action committee refused to sign an agreement with the new administration. On the 2006 Labour Day, labour unions organized rallies (The Nation, 2006e). A coalition of trade unionists, employees, intellectuals and progressive political workers from Pakistan's Communist Party, National Workers Party, and Communist Labour Party, amongst others, demonstrated in front of the SCP building urging it to cancel the privatization:

*President of the National Workers Party, Abid Hassan Minto, warned that the country could witness more financial scams ... if the privatization process was not stopped immediately. [He] ... said privatization of PSM ... was part of the structural adjustment programme of International Monetary Fund and World Bank [that] ... only served the interests of international investors and multinational companies and was part of global capitalism that thrived on the poor and downtrodden of the Third World ... the privatization process was never transparent and national assets were sold to favourite parties at throwaway prices ... He said the process was against Article-3 and 2-A of the 1973 Constitution which ensured equal rights to all citizens and pledged their economic and social emancipation... [and] the very concept of social welfare and deprived the poor of their jobs and livelihood which enabled few individuals to increase their wealth further. (Dawn, 2006d).*

Placards and banners carried slogans against the privatization, government policies, the denial of workers' right to bid for PSM, and their willingness to take it over and run it better than 'profit-hungry' capitalists (Dawn, 2006c).

Inside the court, it was a battle of two competing discourses. The government's pro-privatization discourse reproduced its 'technical signifiers' (Fairclough, 1992) drawn from an accounting discourse influenced by financial economics, i.e., complex futuristic estimates by technical experts, mainly from large accounting firms. In contrast, opponents relied on the anti-privatization discourse which also drew on accounting but used informal and 'non-technical signifiers', based on past profits and land prices that had popular and political traction.

When the SCP agreed to hear the petitions, most Pakistanis were suspicious of its impartiality, believing it was subservient to the military executive and this was an exercise to gain legitimacy before endorsing another military ruler. The opposition political parties, especially the PPP, questioned the sincerity and intention of the SCP and the CJP:

*PPP members, opposed ... the privatization of national assets ... The PPP lawyers, however, advised against becoming a party ... because they believed that it was a pre-planned move [by] the ... Government to come out of the (post-bid) embarrassing situation through a judicial process. (The Nation, 2006f).*

However, as the case progressed, judges' remarks suggested they were becoming swayed towards the anti-privatization discourse, particularly its less technical signifiers. For example, when told that the value of PSM's current assets almost equaled the mill's sale price, as claimed in the anti-privatisation discourse of the opposition reported and commented on by newspapers, the CJP remarked during the hearing that:

*If the steel mills had been sold even as a scrap, it would have fetched more money" (Frontier Star, 2006c); and "It seems as if government is getting rid of steel mills and it is hell bent upon selling it at [any] cost (Balochistan Times, 2006c).*

The national media widely quoted these remarks. SCP judges became convinced of the 'strategic' significance of PSM and it was undervalued, as the anti-privatisation discourse claimed. When interviewed, a bench member recollected:

*It was family silver...[w]e were convinced that PSM was undervalued. I know it is not the judges' job to make judgements about valuations sitting in their chambers... You must read my judgement on privatization of [name of a bank] where I made this point clear ... but this was a case of serious undervaluation.*

The judges became unimpressed with technical valuations of 'experts' such as Citigroup and PWCP and were more inclined to the opposition's valuation.

*We specifically asked them 'did you take the market value of land into account while doing your calculations?' And they said no. (interview with bench member)*

To convince the court that PWCP's valuations were accurate, the government submitted that the buyer's financial valuation by KPMGP reached a similar conclusion. Two independent similar valuations by large prestigious accounting firms left the judges unimpressed. Indeed, their valuations weakened the large accounting firms' credibility:

*I distinctly remember checking with CJP about giving the government an option to assign another reputable international valuer to re-value the mill. He agreed. I asked [a member of government's law team] about the government's reaction if we ask them to get the mill re-valued. He came back to me next day saying that this was not an option. (interview with bench member)*

However, the SCP judges were not immune from government pressure. During the trial, it was rumored that the CJP called on General Musharraf. "On that day, the defense law team's faces were beaming with joy", remembered the plaintiff lawyer when interviewed. General Musharraf's Chief of Staff corroborated this during an interview:



*The CJP had fixed a hearing for the privatization ... The Office of Prime Minister was very upset ... the same or next day CJ requested an incognito meeting with Musharraf ... The President later gave me a paper which listed CJ's reservations on the privatization .... He told me to ensure that the reservations get addressed. We hired some consultants who ... provided recommendations on the prices of steel mills and its assets ... We were not experts on privatization and we went with the consultants. The CJP again had a meeting with Musharraf and this time Attorney General Makhdoom Ali Khan was there. They reached a conclusion that CJ would go and issue a judgment generating a certain degree of caution for the government but the privatization would not be stopped ... When the actual verdict came however it was against us.*

The CJP could not fulfill his promise because of the other SCP judges. Two commented in interviews:

*The night before the judgement ..., I suddenly woke up ... I couldn't go back to sleep. I took out a pen and paper and started writing my judgment. Once I had finished ... I somehow became calm. The next morning, when we all sat together to make a decision, CJ asked me that perhaps we should start with you. I took out the piece of paper and read the judgment. He went to the second judge and he said, I agree with what [name of the judge] has said. Then the next and the next and the next. Everyone agreed with what I had written. It was a unanimous decision.*

*Musharraf was indeed under the impression (by CJP) that the case would be decided in his favour ... (However) we knew that government was acting dishonestly and corruptly ... so, we thought the case should be decided the other way. ... CJ was not aware of this. When he was informed he kept his cool ... and went along. He wasn't left with much choice actually.*

The unanimous verdict on June 23, 2006, to the government's dismay, annulled PSM's privatization due to irregularities in the process, which covered valuation issues. The court wrote:

*The process of privatization of the PSM stands vitiated by acts of omissions and commissions on the part of certain State functionaries reflecting violation of mandatory provisions of the law and rules framed there under which adversely affected the decisions qua ... pre-qualification of a member of the successful consortium ..., valuation of the project and the final terms offered to the successful consortium.*

The judges also noted the hurried manner the decision was made by government institutions, which made them suspect the transaction's transparency and economic merits.

*Besides it has been noted by us with concern that the whole exercise reflected indecent haste by Privatization Commission (P.C.) as well as Competition Commission of Pakistan (C.C.O.P.) in that on 30th of March 2006 the final report of the F.A is received, the officials of the PC process ... on the same day, the meeting of the Board of Privatization Commission also takes place the same day and the summary is prepared the same day. The very next day, i.e. 31st of March 2006, the CCOP meets, considers the summary, fixes a reference price and authorizes the P.C. to approve the highest bid...During the lengthy hearing spread over almost three weeks, no counsel, much less Mr. Abdul Hafeez Pirzada learned Sr. ASC for the Federation, could offer any explanation for the haste in finalizing the process of the privatization. Apart from the illegality noted above viz complete violation of Rule 4, this unexplained haste casts reasonable doubt on the transparency of the whole exercise. (PLD 2006 SC 697)*

However, interviews with the judges indicated that their concerns went beyond procedural. As indicated, they acknowledged that the anti-privatization discourse's simpler valuation proved more persuasive than the complex valuations from top international accounting firms. Their judgment also reflected this:

*The government ... has a fiduciary responsibility to its citizens ... to sell privatizable assets at or above their fair market value ...there was no necessity to privatize the PSMC at a lesser price ... The courts are not supposed to settle the controversy as to which method should have been followed by the valuer ... However, we can look into the models of valuation internationally recognized to ascertain as to which ... suits the seller and buyer respectively. Suffice to observe ... the method of valuation favoured by buyers is known as "Discounted Cash Flow" (D.C.F.) and the method liked by the seller ... are different and distinct ... The crux whereof is that in the fiscal year 2004-2005, PSMC had recorded annual sales of over Rs.30.00 billion and net profit of Rs.6.00 billion ... [and] after restructuring, the liquidity of the Corporation improved and it paid off ... debt of Rs. 11.35 billion on 30th June 2003. ... it was incumbent upon the Privatization Commission to have taken care about these facts and these must have been mentioned categorically in the Terms of Reference framed for the Financial Advisor. (PLD 2006 SC 697)*

One judge had heard a similar but lower profile case on a state bank privatization and then the SCP's judgement accepted the DCF valuation (PLD, 2011: 50). In his interview, he/she opined that judges should not decide valuations because they lack expertise. Instead they should defer to experts but the PSM case was different – there were suspicions of corruption, which had received extensive media coverage. Another bench member contrasted past judicial decisions legitimizing military take-overs with the current case:

*In the past, whenever higher judiciary didn't follow the law, it was to save the country from the risk of instability or turmoil. Here it was a case of national assets being plundered.*

Nevertheless, when interviewed the judges revealed the verdict was not meant to cause problems for or offence to Musharraf, or to derail or delegitimize his rule. One commented:

*We never thought this was a Supreme Court vs. Military situation. Neither did we think that this will lead to souring of relationships between General Musharraf and the Supreme Court. For us it was a case where the civilian government did not conduct itself properly. And the case facts were making us believe that someone in the government was making big money through this sale.*

The judges likened their PSM privatization annulment to other human rights cases, i.e. an opportunity to more strictly check that government officials adhere to the Constitution. Some press coverage reflected this:

*Some of his rulings did comprehensively embarrass the government but hardly any of his decisions impinged hard on Musharraf. However, his intervention in cases of public importance and human rights violations was remarkable (Butt, 2007).*

Others viewed the judicial activism more cynically, believing it was a ruse to recover some long lost (public) legitimacy and credibility for the judiciary.

*The on-going judicial activism of the Supreme Court was a conscious effort to raise morale and credibility of the court in the eyes of the public, so that it could later uphold General Musharraf's*

*attempt to get elected as President in uniform by an existing assembly without attracting too much public condemnation (Lawyer, SCP).*

Whatever, the verdict became widely perceived as a public rebuke of the government's moral probity and a charge sheet and indictment against them. For the first time the judiciary had taken a stance against a government action. Aitzaz Ahsan – a PPP leader speaking to the Journalists Association after a speech to the New York Bar Association stated:

*The Steel Mills case ... was a judgment that was an indictment of the prime minister. After the Supreme Court decided that case, people started saying - including myself in speeches in the National Assembly - that the premier could ... and ought to be indicted (Hasan, 2008).*

#### 6.4 After the Supreme Court PSM Decision

The PSM decision precipitated major changes in the identities of judges of the SCP. “Every word coming out of our mouth during the trial was making headlines and was cherished by the people”, remarked one member when interviewed. Those involved in overthrowing the sale gained instant popularity. Barrister Zafarullah during an interview recalled the post-verdict days:

*I was waiting on a traffic signal and the people sitting in the next car recognized me. The woman in the car said to me, you are like a second Quaid-e-Azam<sup>xv</sup>. He made Pakistan and you saved it [by not allowing PSM to be sold]”.*

The SCP judges became heroes:

*Certain decisions given in the past to validate actions of the military ... went to paint an impression about the judiciary as one that had tilt towards the powerful. This impression, however, has been largely diluted ... the recent annulment of the PSM privatization through a Supreme Court verdict ... markedly distinguished the current judiciary from what it was in the past ... the judiciary ... is in a different mood ... and [is] ... poised to take the bull by the horns (The Nation, 2006g).*

This influenced the higher judiciary:

*We were put on a high pedestal by the people and it was difficult for us to disappoint them now ... we did what was right and if anyone was upset with us for that, it didn't matter... it is the respect that matters. (interview with bench member)*

Whilst the judiciary basked in their newfound glory, the opposition seized upon the furor. They blocked National Assembly proceedings to press for a debate, contending the judgment “raises serious questions for the Government's already eroded credibility” and demanded PM Shaukat Aziz's resignation. (Asghar, 2006b). They continued their tirade against the PM by tabling a unique ‘FIR’<sup>xvi</sup> for ‘misuse of power’ and ‘corruption’ (Daily Times, 2006b). Their no-confidence motion against the PM on August 23, 2006 failed because of the government majority in the Assembly and, according to opposition leaders, the Government refusing a secret ballot. (Dawn, 2006e)

More newspapers linked the PSM sale to corruption. For example:

*This detailed judgment raises serious questions for the Government's already eroded credibility. It reflects a complete and open disregard for any process of accountability ... This ... has drawn the utmost censure from the highest court of the land and by any standard constitutes the highest ground for a vote of no confidence in the working of the Musharraf regime. The fact that the court specifically*

*mentioned acts of commission and omission as a grave factor of concern ... has left no doubt in anyone's mind about the flagrant corruption and graft of the regime (Dawn, 2006f).*

Politicians and newspapers started to connect the PM's misdeeds with the President's silent facilitation. For example:

*When President Musharraf ... (swore) in a new prime minister, he declared that he is transferring responsibility (not the powers) to the new chief executive ... Shaukat Aziz has been accused of corruption, by inference if not by direct evidence ... (but) after the announcement of the Supreme Court verdict, Aziz is reported to have gone with the relevant file to the President Pervez Musharraf and asserted that he did nothing without his approval (The Nation, 2006h).*

The pro-privatization discourse remained but lost its salience. It had nothing new to offer – no new signifiers, no new meanings for existing ones, and they remained essentially formal and technical. Hence the scant media coverage it received merely restated the government position (see Tables 2 and 7). In contrast, media coverage of the anti-privatization discourse increased greatly regarding the number of articles (see Table 2) and coverage of its signifiers (see Table 8). The humanitarian/labour signifier covering employee concerns about 'job security' and non-participation, covered little previously and possibly redundant after the annulment of the sale, disappeared. However, the media increasingly propounded the meta-discourse of nationalism linked to the signifier of privatization and its sub-signifiers, a threat to national sovereignty and security. Similarly, coverage of the accounting valuation based on land prices and historic profits; and, to a lesser degree, the threat the privatization of PSM, a national strategic asset, would pose to domestic industries' efficiency and competitiveness all increased. Finally, the newspapers increasingly fed populist beliefs on state corruption by associating the sale with allegations of corrupt practices by those involved. The government's reputation for financial probity became depicted as 'unethical', 'corrupt', and 'fraudulent'. The anti-privatization discourse introduced no new signifiers, which remained predominately informal and non-technical but, fueled by media coverage, its discourse of scandal and nationalism attracted readers many of which were nationalistic skeptical but widely believed political leaders were corrupt. It became increasingly hegemonic.

**Table 7**

**Pro-Privatization Discourse in Newspapers in the Period After the Trial (24th June, 2006 to December 31<sup>st</sup>, 2007)**

Meta-Discourse Drawn	Main Signifiers	Sub-Signifiers	Post--Verdict Newspaper Coverage (Count)				
			The Nation	Dawn	Daily Times	The News	Total
Economic Strategy	Economic Growth	National economic/GDP growth/progress/development	7	-	2	5	14
	Total		7	-	2	5	14

Accounting	Profitability	Burden/liability Loss-making entity	1	-	1		
						-	2
				-	1	1	-
	Valuation	Going concern/ DCF method	-	-	-	3	3
	Total		1	1	2	3	7
Efficiency & Competitiveness	Privatization – a strategic decision	Strategic/new investor/buyer /sale	-	1	-	-	1
		Investing capital	-	1	1	-	2
		Technological up- grading/modernization/enhancement	-	-	1	-	1
		Continued utility of PSM (for steel production)	-	2	2	2	6
	Total		-	4	4	2	10
	Grand Total		8	5	8	10	31

**Table 8**

**Anti-Privatization Discourse in Newspapers in the Period After the Trial (24th June, 2006 to December 31<sup>st</sup>, 2007)**

Meta Discourses	Main Signifiers	Sub-Signifiers	Post-Verdict Newspaper Coverage				
			The Nation	Dawn	Daily Times	The News	Total
Economic Globalisation Strategy vs. Nationalism	Privatization Policy	Economic imperialism	2	2	1	3	8
		National security concerns/threat of wrong/foreign hands/Mithal and criminal national bidders	10	7	6	7	30
		Selling/sale of profitable national assets to private hands. Soon no national assets will be left to privatize	4	3	2	6	15
		<b>Total</b>	<b>16</b>	<b>12</b>	<b>9</b>	<b>16</b>	<b>53</b>
	National Asset	strategic asset(s)/family silver	14	14	5	5	38

Efficiency & Competitiveness	Strategic Asset	Strategic [management] stake giveaway		3	-	-	3
		Poor impact on downstream industry and consumers and social welfare	-	6	-	2	8
		No assurance of continued steel production		-	-	2	2
		Captive domestic market of supply-demand imbalance because of “mother industry”	1	4	2	-	7
	<b>Total</b>		15	27	7	9	<b>58</b>
Accounting	Valuation	Sale at throwaway/peanuts/scrap/meager/cheap price or at no price at all/paltry price/a gift to buyers	22	17	9	15	63
		(Market/real-estate) value/valuation/price of PSM assets/land	4	23	5	11	43
	Profitability	Good PSM condition and performance	3	4	1	4	12
	<b>Total</b>		29	44	15	30	<b>118</b>
Humanitarian re labour	Employee Concerns	Employees concern/bids/disapproval	-	-	-	-	-
		Protests from employee union/employment implication	-	-	-	-	-
	<b>Total</b>		-	-			-
State Corruption	Corrupt motives	PSM privatization to ‘favorite parties’ a planned scam/fraud/conspiracy to loot taxpayers’ money / kickbacks.	12	9	9	7	37
		Seller-buyer contacts/relations	1	3	1	-	5
	<b>Total</b>		13	12	10	7	<b>42</b>
	<b>Grand Total</b>		73	95	41	62	<b>271</b>



## 6.5 Suspension of the CJP and the Lawyers' Movement

The PSM decision “*annoyed the Khakis (military). Soon Babus (bureaucrats and state officers) too were ... annoyed by the cancellation of the Steel Mills’ privatization.* (Lawyer, SCP). Shaukat Aziz was furious. According to interviewees he persuaded Musharraf that the CJP threatened his rule. Musharraf requested Iftikhar Chaudhry to resign as CJP on March 9, 2007.<sup>xvii</sup> When, to his surprise, he refused, he was forcefully removed from office on charges of ‘misconduct’, ‘misuse of authority’, and ‘corruption (Kamran, 2007). He was detained in a military house (Ahmed and Stephan, 2010), and placed under house arrest with no external communications permitted. However, a week later the Supreme Judicial Council (SJC) lifted the ban on the CJP’s freedom of movement. Following an interview with a close aide of General Musharraf, Shahzad Raza wrote:

*The general thought removing CJP Iftikhar Muhammad Chaudhry would be as easy and simple as to fire his kitchen staff. He was wrong. That one bad decision shook the very foundation of his authoritarian rule. It was the beginning of a movement that led to his downfall ... But this event cannot be looked at in isolation... especially after an adverse court decision in the Pakistan Steel Mills case. (Raza, 2012).*

Questions were raised nationwide about the motives behind the suspension:

*Some commentators have linked ... the Government’s alleged unhappiness [with] ... the judicial activism shown by the “non-functional” CJP, [and] the Supreme Court decision against the privatization of the Pakistan Steel Mills ... The matter is of the utmost importance to the nation because it is germane to the concept of the independence of the judiciary, its ability to interpret the Constitution and the law objectively without fear or favour, and its capacity to act as a check against the excesses of the executive. (Husain, 2007)*

At this juncture, another moment of dislocation occurred and the new key nodal point, independence of the judiciary from the executive, attaches and subsumes the PSM anti-privatization discourse to its own.

Initially, only a few hundred junior lawyers protested about the CJP’s removal. Senior judges and lawyers were silent observers. However, the protests quickly spread to other lawyers nationally and became the ‘Lawyers’ Movement,’ a social movement involving major sectors of civil society, NGOs, and eventually the media, corporations, and even some international actors, diplomats and ambassadors. It presented the suspended CJP as the face of a new independent judiciary whose only crime was stopping the executive taking unethical decisions. For example, a commentator stated:

*The current crisis over the presidential ... [action] against the country’s CJP on “flimsy” and “politically-motivated” charges only shows our bankruptcy in Constitutional norms and values ... For the first time in our history, however, we are witnessing an unprecedented impulse to stand up to this power play. At stake is what the beleaguered CJP describes as “the sanctity of the separation of powers” and the independence of the judiciary which though known for its traditional complacency during military take-overs and Constitutional amendments, is today a symbol of unprecedented defiance of absolutist authority which for more than half a century has kept the country “strapped under long spells of military rule” ... The people have woken up. (Ahmad, 2007)*

In March 2007 Iftikhar Chaudhry began visiting major cities to address bar associations. ‘Lawyers arrived ... in late evenings and the meetings lasted until midnight’ (Ahmed and Stephan, 2010: 495). They were galvanized into joining protests and demonstrations. A Washington Times reporter after his Rawalpindi High Court visit wrote:

*The suspended CJP received a hero's welcome from some 2,000 lawyers ... as he gave his first address since President Pervez Musharraf removed him from the bench ... the judge was careful not to refer directly to the case against him. The closest he came was to speak broadly about the importance of maintaining an independent judiciary. (Witte, 2007).*

When the CJP addressed Hyderabad bar members in April 15, surprisingly, 15 judges of Sind High Court attended, which was a big blow to the Government. Despite government attempts to block rallies, CJP continued to public acclaim:

*The 59-year-old judge ... has been showered with rose petals by tens of thousands of cheering supporters on a series of road shows since President Musharraf suspended him ... his backers say Mr Chaudhry ... anger(ed) the Government by breaking with precedent ... One landmark decision was the overturning of a lucrative sale of the Pakistan Steel Mills ... which embarrassed its brainchild, Prime Minister Shaukat Aziz (Dawn, 2007).*

Iftikhar Chaudhry became an unlikely hero, but he was not uniformly popular. Several High Court judges and lawyers expressed annoyance of his allegedly arrogant, authoritarian and dominating approach. They acknowledged his judicial activism since becoming CJP but attributed this to various reasons: vanity, desire for greater power and status, a difficult temperament, annoyance at the regime’s failure to promote his son, or an act of conscience to redeem his previous judicial acts. Nevertheless, the common public perception was that the charges against Iftikhar Chaudhry were an attempt by the executive to stop the judiciary exercising Constitutional control over the running of the state (Rahman, 2007).

Initially the media described events as they happened, which participants in the Lawyers’ Movement recalled gave their struggle national recognition:

*The entire media was showing us live ... everybody in every household was aware of the issue and desired to contribute ... and had there been no media, the results could have been different.*

*Regardless of whether the protesting and marching people were one million or just 500, their images were going into each and every household, and these were against Musharraf, who underrated their impact, portraying him in a negative light and earning him hatred.*

The government had issued a photograph of the CJP facing Musharraf and five generals, all in military uniform, when being dismissed to demonstrate their authority. But when widely disseminated in the media it became iconic, being interpreted as the solitary individual standing against military rule. Later, when security forces dragged CJP by the hair from his house into a police car to take him to a SJC hearing, this was filmed and widely circulated on news channels and in newspaper reports. For many Pakistanis, accustomed to corrupt and arbitrary police practices, the images had resonance and reflected a degradation of “the law”. “*That photograph did it for a lot of people, and it did it for me,*” explained Ghazala Minallah, a civil society activist in Islamabad. “*That just launched us into protest mode*” (Note, 2010; Harvard Law Review: 1713).

After the hue and cry this incident provoked, senior judges and lawyers became more vocal in expressing disapproval of the removal of the CJP.

Soon the media became a party to the judicial crisis, not only by providing comprehensive coverage to the Movement but also, allegedly, by exaggerating its mass participation, hiding ugly images and weak points, and sensationalizing events. Talat Hussain, a television anchor known for non-partisan, courageous, and detailed analysis of current affairs attributed the changed stance of media channels and owners to intra-industry competition.

*When they saw us going live the bigger channels such as GEO and ARY provided live transmission of CJ's address(es) ... They used the argument that if a smaller channel was going live, how could they not? It would mean bad business strategy ... So these bigger channels imitated us ... Ibrahim told me that had we not taken the lead, they would have never supported the judiciary. Those running bigger channels and platforms such as GEO and JANG are intelligent people. They realized ... this was going to become a big movement ... and once they [sided with it] they promoted the movement like no other channel could or did.*

General Hamid Javed confirmed this:

*We often met channel owners such as Dawood Razaq and Salman Ibrahim. They told us it was our race of viewership and if we couldn't stop GEO, they would have to do it too.*

Popular support and the increasing strength of the Lawyers' Movement, led the SCP to restore Iftikhar Chaudhry to office on July 20, 2007. This sparked jubilant celebrations throughout Pakistan. The jurisprudence of the court had changed from legitimating *de facto* authority to upholding the rule of law and Constitutionalism. The PSM privatization verdict not only restored Iftikhar Chaudhry's credibility but also that of the superior judiciary.

*The public does not see Justice Chaudhry as a bad judge ... [rather] as the man who gave an impeccably brave and patriotic judgment in the Steel Mills privatization case...The public thinks this has annoyed the really powerful sections of the civil and military establishment which has moved in to reassert itself at the expense of the CJP in particular and the judiciary in general (Rahman, 2007)*

The outpouring of disrespect and criticism of the PM diminished his reputation and legitimacy and weakened Musharraf's presidency. Even PSM's Chairman, General Qayyum, joined the fray, claiming he told the PM the price of PSM's land was Rs. 40 billion when he fixed the privatization price at Rs 21 billion. He alleged his concerns in a private letter to the PM brought an insulting response reminding him that this matter fell outside his purview (The News, May 25, 2008). General Qayyum questioned Shaukat Aziz's involvement in the PSM privatization, called for an FIR to be registered against him, and claimed that President Musharraf refused at least three attempts to discuss the privatization. Eventually he got a phone call suggesting he should consider himself out of a job (ibid). Musharraf's credibility as a clean and sincere leader who assumed power to eliminate bad governance, mismanagement and corruption suffered greatly.

Following worries that the SCP would debar him from standing in the 2008 elections, on the 3<sup>rd</sup> November, 2007, Musharraf declared a state of emergency, declared martial law, suspended the Constitution and removed many High Court and SCP judges, including Iftikhar Chaudhry. Independent television channels were blocked, and barricades and barbed wire blocked access to

Parliament, the presidential residence and the SCP to prevent any judicial review, though a seven member SCP bench rescinded the order to no avail. The media restrictions infuriated journalists and media owners. Two independent TV channels continued transmitting from abroad until the Pakistan Government managed to close them. The media and its owners now openly supported the lawyers and identified media freedom with judicial independence.

After a long and bloody struggle, led by Iftikhar Chaudhry and the Lawyers' Movement but joined by other sectors of civil society pursuing various ends. Asif Ali Zardari (widower of Benazir Bhutto, the PPP leader, assassinated upon returning to contest the elections) was elected President in the delayed September 6, 2008 elections. He refuted his wife's promise to restore the impeached judges, fearing an independent Iftikhar Chaudhry might prevent his reinstatement, as he had refused to give him impunity from corruption cases. This precipitated more bloody and violent sit-ins, demonstrations and long marches. Under international and domestic pressure Iftikhar Chaudhry and the deposed judges were restored to office in March 2009. A cable from the US ambassador, published by Wikileaks said:

*Reports and photographs of the countrywide "celebrations" following the much-awaited reinstatement of the deposed judges including CJP Iftikhar Chaudhry dominated headlines in all newspapers ... the Urdu daily, "Jang," and its sister English newspaper, "The News," quoted President Zardari as saying that "he was never against Justice Iftikhar" ... All major dailies ran analytical editorials on the restoration of the deposed judges by Prime Minister Gilani and its far-reaching implications.*

Interviewees were divided over the aims and achievements of the SCP's PSM verdict and the social movement to restore the CJP. However, most recognized it changed the identity of the judiciary. It assumed a new subject position - an independent body with powers to scrutinize executive decisions and rescind them if they contravene the 'larger national and public interest'

## 7 Postscript

After tendering his resignation following impeachment threats by the ruling PPP in 2008, Musharraf moved to London in self-imposed exile. He engaged in legal battles after the high courts issued warrants to him and Aziz for their alleged involvement in the assassinations of Benazir Bhutto and Akbar Bugti. He returned to Pakistan to participate in the general elections in 2013 but High Court judges disqualified him. On 31 March, 2014, he was charged with high treason for implementing emergency rule, suspending the Constitution in 2007 and various murders. On March 16<sup>th</sup>, 2016, to the dismay of prosecutors, he was permitted to go to Dubai to receive treatment for a bad back. Shaukat Aziz left office on 16 November 2007 at the end of the parliamentary term: the first Pakistan PM who left after completing the parliamentary term of five years. He now resides in Dubai, United Arab Emirates and serves on several business and advisory boards. The SCP has continued to assert its independence with respect to politicians. In July 2017 another prime minister, Nawaz Sharif faces a criminal trial after the SCP removed him from power following corruption allegations.

According to a Bloomberg report (Haider and Qayum, 2015), after the 2008 financial crisis PSM's losses accumulated, and were roughly \$20 million a month until it ceased operating in June 2015 when gas supplies were cut due to mounting debts. Investors see about two-thirds of its 16,000 workers as unnecessary and most others as incompetent. However, Pakistan must privatise 40 SOEs, including PSM, to fulfill the conditions of a \$6.6 billion loan

from the IMF in 2013. In December 2015, the Privatization Commission Chairman, Mohammad Zubair said, “Finding a potential buyer for Pakistan Steel will be a nightmare because the company is a nightmare.”

Now the SCP accepts that the executive has authority over economic decisions but the court can intervene if they contravene procedures and regulations or are clearly contrary to the welfare and good of the people. Consequently, it has intervened in pricing decisions, for example for sugar, electricity, pharmaceutical and even the humble samosa. This, coupled to the plight of PSM, has attracted increasing criticism:

*Today the Supreme Court is ... fixing prices of everything from CNG to samosas [snacks]. Doing so makes the CJP behave like Mughal emperor Akbar who used to fix the wheat prices. The mindset of the CJP has therefore become that of a ruler ... not of a judge. (Justice Shabbar Raza Rizvi)*

As discourse theorists note, meanings and identities are only partially fixed and are contingent. Competing discourses about the SCP’s intervention into pricing decisions are emerging.

## 8 Discussion and Conclusion

An objective of the paper was to better understand the interface of accounting and law (Moore, 1991; Napier and Noke, 1992; Bromwich and Hopwood, 1992), especially in determining the value of an object (Beattie et al., 1999; Cummings and Harrison, 1994; Yee, 2002); the role the media played during this interaction; what influenced the ‘judicial mind’ and popular opinions of a valuation, and its after-effects in bringing about socio-political change. This has been addressed by examining why and how a court of law adjudicated on the monetary value of PSM (as opposed to that of others); how this related to the identity of the judges (Mcpherson and Sauder, 2013) and discourses reproduced within the media; and how this precipitated a social movement that brought about major political changes (Fourcade, 2011). By rejecting legal and accounting positivism adopted by most research in both disciplines (Davies, 2002), the paper provides rare insights into how judges valued objects during a trial and the media influence therein (Hall, 1988; Mennicken and Power, 2015). It demonstrates how research methods in discourse theory can meet concerns of its critics (Breeze, 2011) - it does not analyse a single discourse and then produce an imagined opposition but empirically derives an oppositional discourse; and it links the discourses to actual events.

The change has special significance because the belief that a military government was a guarantor of national security and privatization was a necessary economic policy had almost acquired a hegemonic status in Pakistan. Since Pakistan’s creation, military coups have overthrown elected civilian governments. Their legitimacy lay in the discourse that civilian rule was destabilizing the country, connected to a broader discourse that the military, as custodians of ‘security’, should rule to protect Pakistan against an enemy, i.e. India. In the most recent coup, however, the military identified the security threat not as from outside but from within - namely corrupt civilian governments and worsening economic conditions. They created a discourse that they would make Pakistan secure by forming a corruption free government to foster economic growth. The privatizations of SOEs, stemming from the market-based globalization economic policies prescribed by the IMF and World Bank, had been inaugurated by previous civilian

governments and endorsed by all major political parties. The privatization of PSM was presented as a natural step by the military government towards its goals. Its discourse rested on key signifiers such as national 'economic growth' (the reciprocal relationship between economic growth and privatization); the 'profitability' of PSM (essential for its sale); and attracting a 'strategic' investor (who could expand PSM's efficiency, technology and capacity). This discourse was hegemonic because the government, like its predecessors, intensively promulgated and shaped it.

The government was enjoying favorable economic conditions and the opposition political parties' prospects looked bleak - for most Pakistanis their corruption and incompetence was 'established fact'. Employees of PSM concentrated on negotiating for their jobs and financial security. The higher judiciary was also pro-military and had never challenged any important executive decision. Thus, opposition to the military government was fragmented and weak, with little likelihood of a collective movement against it. The bidding for shares in PSM, however, offered an opportunity for the opposition to launch an anti-privatization discourse.

The anti-privatization discourse became effective in two ways. As Gallhofer and Haslam (2003) indicate, accounting assumed different meanings and significance depending on how it was signified. First, the discourse introduced and weaved together signifiers from diverse meta-discourses: accounting, nationalism, economic strategy, humanitarianism and state corruption (Fairclough, 1992). Second, it adopted an informal, popular language style, unlike that of the state, organizations, or the higher judiciary (Hall et al., 1978: 61). The 'nationalist' discourse, initially promulgated by opposition political parties, presented PSM as 'family silver', an asset of national pride and importance vis-à-vis defense and economy that should not be owned by 'private (probably foreign) hands' at any price. These signifiers combined with simpler signifiers such as 'market value', 'annual profit' and 'return on investment', drawn from an accounting discourse, 'proving' that PSM, an invaluable asset, was sold at a 'throw-away price'. The only rational explanation was 'corruption' of high government office holders, which increasingly entered this alternative discourse. The 'indecent haste' of the valuation and the procedural violations augmented this concern. This innovative synthesis of informal signifiers from diverse meta-discourses was in sharp contrast to the pro-privatization discourse.

The pro-privatization discourse was relatively homogenous regarding its meta-discourse, namely 'economic strategy', especially the advantages of integration into a global economy, and reliance on 'accounting' valuation resting on the calculative logic of financial economics adopted by the large accounting firms and financial advisors such as Citigroup, PWCP and KPMGP. Here, the heritage value of an asset, and its strategic significance regarding national security and employment were deemed insignificant against the probability of future economic inflows. The presentation style was homogenous too. It lay on technical signifiers like 'going concern', 'fair value', 'discounted cash flows adjusted for risks', and 'replacement value'. The cold calculative logic of financial economics, which stripped PSM of its history and reduced its value to a 'cash generating unit', failed to appeal to the masses or to the higher judiciary.

The interdiscursive nature of anti-privatization discourse (Fairclough, 1992) convinced the judges and the masses that a great injustice was being done and must be prevented (Benford and Snow, 2000; Gamson, 1992). The discourse had: empirical validity, i.e., could be tested; experiential commensurability, i.e. it was consistent with lived experiences of the target audience; and narrative fidelity, i.e., it conformed with their 'cultural heritage' (Snow and Benford, 1988). Our case study suggests that accounting must possess these characteristics in discursive struggles

over valuation for the populace to embrace it. Anyone, judges and citizens alike, could relate to the accounting numbers (market value, profits, value of stores) in the anti-privatization discourse and re-perform these calculations (market value per acre times the number of acres). Thus, the discourse had empirical validity and experiential commensurability. Moreover, the signification equating PSM to a strategic asset; valuable for national pride, security and the economy; granted a new meaning to its 'value' and resonated with the target audience, whereas the pro-privatization discourse's abstract value of PSM that stripped out its historical significance did not. However, the latter's abstract economic value was acceptable in another case, e.g. the bank privatization, where the valuation question was only important from an economic perspective.

Research on courtrooms worldwide indicate that experts' opinions increasingly carry more weight than those of ordinary people (Brint, 1998; Nesler et al., 1993) because they use calculative technologies to quantify different orders of worth held by ordinary people (Fourcade, 2011). Pakistani judges are no different from judges elsewhere in deferring to financial experts and economic valuations (Yee, 2002). Previously they (including the judges sitting on the PSM bench) had not objected to privatizations using the technical valuation methods employed by government agencies in the PSM case. However, the judges believed the PSM case was different. The media coverage precipitated wider emotions (Mennicken and Sjögren, 2015) - common-sense accounting numbers associated with broader signifiers, stirred memories and gave some judges sleepless nights, which galvanized them into preventing a perceived irreparable injustice (Gamson, 1992). Analyzing the discursive dynamics (production, dissemination and reception) of the PSM case helps understand how valuations using accounting numbers and techniques are influenced by the judicial mind. They too are affected by emotions, popular discourse, and media coverage. The valuation, allied to procedural violations, and the rushed manner the valuation decision was made, convinced the judges that something was amiss with the transaction. This paper has not focused on the role of emotion in valuation disputes, but its importance in this case suggests more work is required on this. The discourse theory of Laclau and Mouffe, which draws heavily on Lacanian psychoanalysis (Lacan, 1977), provides a useful framework to explore this in future accounting research.

The study also reveals the importance of the media and their predilection to accounting numbers and issues that resonate with their readers' or viewers' preferences. The inter-discursivity of the anti-privatization discourse was not independent of the political interests and power of its proponents, including the media (Laclau and Mouffe, 1985). Initially the media showed limited interest in PSM's privatization and largely reproduced the government's case. However, this increasingly changed following the emergence of the anti-privatisation discourse and the government's blocking of the media. The media's subsequent coverage of formal events and voices in the language of common people helped readers to empathize with the anti-privatization discourse. The contrasting media representation of each discourse was stark. As Neu et al. (2001) observed, repeated appeals by governments to findings of experts may be ineffective in the face of calculations using simple numbers and stories appealing to 'common-sense' and invoking scandals. The newly competitive media, regardless of their political affinities, realized this and increasingly repeated the alternative discourse in laymen's language and reinforced popular nationalistic beliefs rather than the government's discourse that merely valued an economic asset, which could be any asset, using complex 'technical' methods couched within a more abstract meta-discourse of economic globalisation.



The case also connects discourses to politics. The PSM decision and its aftermath presented novel and hitherto absent ‘grounds for resistance’ to its adherents, and each discourse defined their political positions and extended or reduced their interests. For the politically cornered, dispersed and leaderless opposition parties, it was an opportunity to attack and eventually overthrow the military government. For a hitherto subservient judiciary it asserted, for the first time, their role as protector of the Constitution and a check on the executive. This was extended to economic matters involving pricing. For the media, it was initially an opportunity to attract revenue, though some journalists saw it as a test of independent reporting, but following the media suspension it became a battle for media freedom. Moreover, it energized an otherwise inactive civil society. However, as Laclau and Mouffe (1985) note, the discourses underlying political positions and the identity of subjects are unstable and contingent. As the postscript intimates, the judges’ involvement in economic decisions is increasingly questioned. Also, the civilian government on resuming power repudiated its commitment to restoring the CJP.

The paper also contributes to research on the role accounting can play in discursive struggles involving social movements and political change (Cooper, 2002; Cooper et al., 2005) and the necessary conditions for their success. It is an open question whether the discursive struggles over the value of PSM would or could have precipitated a social movement had the CJP not been suspended. However, to be effective politically, the crowd must cohere into a social movement, which requires enrolling intellectuals and experts to give shape and credence to its counter calculations and alternative discourse (Laclau, 2005). This did not occur until the junior lawyers provided the necessary organization, clearly defined its purpose, and made the intellectual endeavor to create a social movement. Their dichotomous antagonistic division of society around two incompatible chains of equivalence subsumed the PSM anti-privatization discourse within that of judicial independence. Also, Iftikhar Chaudhry emerged as the leader perceived (rightly or wrongly) as from the group. This reinforces the observation that for accounting valuations to precipitate and further social movements, they must be linked to other signifiers, sufficiently broad, elusive or ambiguous to entice more groups into the hegemonic struggle (Stavrakakis, 1997). However, the more groups and demands are incorporated the less clear the enemy and mission becomes and the less determinate the outcomes. Not all parties are satisfied with the outcome, e.g. the conduct of the new elected civilian governments, and the role of judges. This gives impetus to new discourses, emotions and identities. Whether these factors during valuation disputes and their outcomes are unique to this case warrants further investigation.

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<sup>i</sup> Damages, fines, divorce and business settlements are all examples of valuations carried out in courts on daily basis (Fourcade, 2011)

<sup>ii</sup> The term socio-political change means the re-distribution of rights and liberties, power and opportunities including equal opportunity to participate in the political process and equal and non-discriminatory treatment of all people (Rawls, 1971).

<sup>iii</sup> "It is not terrorism, campaigning by political parties, or street protests that has brought the Musharraf regime to the brink of collapse. It is the Supreme Court, an institution with no guns to enforce its will" (Shah, 2007).

<sup>iv</sup> There are differences over objectivity: accounting strictly separates subject and object whereas legal positivists maintain that law is an accepted social creation that assumes objective characteristics (Davies, 2002: 35). Successful laws constitute objective facts.

<sup>v</sup> PhD research carried out and supervised by 2nd and 1st author respectively.

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<sup>vi</sup> Whether the media shapes or merely reflects popular opinions is notoriously controversial. Research indicates the issue is complex and contingent (Perse and Lamb, 2017). However, in this research, either interpretation is plausible and need not detract from the analysis.

<sup>vii</sup> See reference for details of the research methods and data analysis.

<sup>viii</sup> The media made frequent corruption charges against the subsequent Pakistan People's Party (PPP) government that assumed power in 2008. The SCP took these up causing severe embarrassment and disrepute to the Government, which contributed to its humiliating defeat in the 2013 elections, when Nawaz Sharif became PM after a landslide victory. Presently the SCP is hearing a case for his disqualification following information leaked in the Panama papers regarding offshore companies. The verdict is expected but the comments of the judges and news media coverage has damaged the ruling party's reputation.

<sup>ix</sup> Public Interest Litigation was interpreted by judges to consider the intent of the public at large and to recognise that it is not always possible for vulnerable individuals to litigate to protect their or public rights. [Law and Justice Commission of Pakistan's website: [http://ljcp.gov.pk/njc/public\\_interest\\_litigation.htm](http://ljcp.gov.pk/njc/public_interest_litigation.htm). *Suo moto* is an act of authority taken without formal prompting from another party. It is usually applied to actions by a judge taken without a prior motion or request from the parties.

<sup>x</sup> Iftikhar Chaudhry hailed from Baluchistan, where "disappearances" of citizens by state authorities were rife, hence his interest in illegal detentions. The case became popular and created many ripples in Pakistan.

<sup>xi</sup> <http://elections.com.pk/candidatedetails.php?id=6888>

<sup>xii</sup> Before PSM, the biggest privatization transaction was that of Pakistan Telecommunication Corporation Limited (PTCL), a state owned and profitable telecommunication giant. 26% shares in PTCL (with complete management control) were sold to Etisalat, a UAE based firm for \$2.6B on June 18, 2005. The buyer paid 25% deposit amount but failed to pay the remaining amount on August 28, 2005. Negotiations between the Government and Etisalat resulted in rescheduling of the balance payment in the next 2 years. While the matter was reported in the national media, it had not become a major issue by the time the privatization of PSM was carried out. Ironically, it did become a major scandal in the years to come when Etisalat failed to make the balance payment as per the agreed upon schedule, while continuing to have management control rights of the corporation since 2005. The matter was reported to the National Accountability Bureau as a possible mega case of corruption in 2015 because Etisalat had not still paid almost one-third of the agreed upon payment.

<sup>xiii</sup> Multiples analysis, an old method of valuation well understood in the 1800s was widely used by U.S. courts during the 20th century. It has declined as Discounted Cash Flow and more market-based methods became popular. Valuation using multiples identifies comparable assets (the peer group) and determines their market values, which are converted into standardized values relative to a key statistic, since absolute prices cannot be compared. This creates valuation multiples which are applied to the key statistic of the asset being valued, controlling for differences between the asset and the peer group that might affect the multiple (Simkovic, 2017).

<sup>xiv</sup> Precedent Transaction Analysis is used in investment banking. It compares past transactions to gauge the current valuation of a company.

<sup>xv</sup> Quaid e Azam, literally means the biggest leader, a title given by the people of Pakistan to the founding father, Muhammad Ali Jinnah.

<sup>xvi</sup> A First Information Report (FIR) is a written document prepared by police upon receiving complaint of a cognizable offence. It is generally lodged with the police by the victim or someone on their behalf but anyone can do so.

<sup>xvii</sup> See <http://www.loc.gov/law/help/pakistan-justice.php>